

Supreme Court of the United States

October Term, 1907

No. 201

**THE VIRGINIAN RAILWAY COMPANY,
APPELLANT,**

vs.

**THE UNITED STATES OF AMERICA, THE INTER-
STATE COMMERCE COMMISSION, AND THE
CHESAPEAKE AND OHIO RAILWAY COM-
PANY ET AL.**

No. 202

**THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION, AP-
PELLANTS,**

vs.

THE VIRGINIAN RAILWAY COMPANY

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

FILED JANUARY 27, 1908

(31,647, 31,648)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 281

THE VIRGINIAN RAILWAY COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA, THE INTER-
STATE COMMERCE COMMISSION, AND THE
CHESAPEAKE AND OHIO RAILWAY COM-
PANY ET AL.

No. 282

THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION, AP-
PELLANTS,

vs.

THE VIRGINIAN RAILWAY COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

VOLUME II

INDEX

	Original	Print
Exhibit No. 10—Working agreement.....	1158	055
Exhibit No. 11—Map.....	1168	063
Exhibit No. 12—Statement showing average dis- tributes	1169	064

	Original	Print
Exhibit No. 13—Statement comparing distances.	1176	677
Exhibit No. 14—Statement showing average distances from different districts.....	1177	678
Exhibit No. 15—Statement of rates on bituminous coal.....	1187	695
Exhibit No. 16—Statement of rates on bituminous coal.....	1188	696
Exhibit No. 17—Statement showing comparison of rates on bituminous coal.....	1189	697
Exhibit No. 18—Comparison of rates on commodities	1190	697
Exhibit in Evidence—Bill of complaint before the Interstate Commerce Commission in the case of Wyoming Coal Company et al. vs. The Virginian Railway Company et al.....	1191	697
Exhibit No. 20—Application of The Virginian Railway Company for just compensation....	1206	708
Exhibit No. 21—List of car operations on Virginian Railway.....	1225	736
Exhibit No. 22—Map of The Virginian Railway Company	1231	739
Exhibit No. 23—Map.....	1232	739
Exhibit No. 24—List of improvements necessary between Elmore and Deepwater.....	1233	740
Exhibit No. 25—Statement showing tons of coal handled	1234	741
Exhibit No. 26—Statement of days cars remained off line.....	1235	742
Exhibit No. 27—Statement showing average delay	1236	744
Exhibit No. 28—Statement of average miles per car per day.....	1237	745
Exhibit No. 29—Statement of time lost.....	1238	748
Exhibit No. 30—Operating expenses and cost study	1239	748
Exhibit No. 31—Statement of expenditures for improvements	1279	755
Exhibit No. 32—Map of The Virginian Railway and connections.....	1284	758
Exhibit No. 33—Rates on bituminous coal.....	1285	759
Exhibit No. 34—Rates on bituminous coal.....	1286	759
Exhibit No. 35—Trackage agreement.....	1288	760
Exhibit No. 36—Map of portion of Kanawha, New River, and Pocahontas coal districts.....	1328	796
Exhibit No. 37—Agreement between The Virginian Railway Company and The Chesapeake and Ohio Railway Company, May 10, 1915, and correspondence.....	1329	797
Exhibit No. 38—Agreement between The Virginian Railway Company and The Gulf Coal Company, September 23, 1908.....	1347	809

INDEX

iii

	Original	Print
Exhibit No. 39—Deed for right of way between The Gulf Coal Company and The Virginian Railway Company and map showing right of way	1351	813
Exhibit No. 40—Agreement between The Gulf Coal Company and The Virginian Railway Company, January 6, 1910.....	1356	818
Exhibit No. 41—Map of New River coal territory	1360	820
Exhibit No. 42—Map of Kanawha coal territory.....	1361	820
Exhibit No. 43—Statement of distances, rates, and ton-mile earnings.....	1362	821
Exhibit No. 44—Right of way and track map of The Chesapeake and Ohio Railway Company..	1363	821
Exhibit No. 45—Maps and profiles of certain lines in the New River district.....	1364	822
Exhibit No. 46—Per cent of car supply.....	1382	823
Exhibit No. 47—Relative car supply.....	1383	824
Exhibit No. 48—Average days per car.....	1384	825
Exhibit No. 49—Average time cars away from Norfolk and Western Ry. lines.....	1385	826
Exhibit No. 50—Average time cars away from Norfolk and Western Ry. lines.....	1386	826
Exhibit No. 51—Profile of Norfolk and Western Ry. lines.....	1387	826
Exhibit No. 52—Extract from testimony of D. E. Spangler	1388	826
Exhibit No. 53—Twelfth annual report of Virginian Ry. Co.....	1391	829
Exhibit No. 54—Chesapeake and Ohio coal loadings	1424	875
Exhibit No. 55—Contract between East Gulf Coal Co. and The Virginian Railway Co., May 17, 1919	1425	876
Exhibit No. 56—Agreement between The Chesapeake and Ohio Ry. Co., The Virginian Ry. Co., and The East Gulf Coal Company, November 29, 1919.....	1433	884
Exhibit No. 57—Supplemental report of the Interstate Commerce Commission in the "Five per-cent case".....	1441	890
Exhibit No. 58—Statement re certain agreement	1442	891
Exhibit No. 59—Statement of cars received from and delivered to Chesapeake and Ohio Ry. at Deepwater.....	1443	892
Exhibit No. 60—Statement of increased expense.....	1444	892
Exhibits in Evidence—Statements of average delay	1447	895

	Original	Print
Statement of New River tonnage handled..	1450	898
Chesapeake and Ohio Ry. coal loadings.....	1451	899
Exhibit 5-A—Local Virginian mines.....	1452	899
Exhibit in Evidence—Proceedings before the Interstate Commerce Commission in the case of Wyoming Coal Company et al. vs. The Virginian Ry. Co. et al.....	1456	902
Secretary's certificate.....	1456	902
Statement of evidence.....	1459	903
Appearances of counsel.....	1459	903
Colloquy between examiner and counsel.....	1460	904
Testimony of W. T. Tams.....	1464	906
Testimony of Ezra E. Williamson.....	1495	926
Colloquy between examiner and counsel.....	1519	941
Testimony of Charles H. Hix.....	1520	942
Clarence W. Huntington.....	1549	961
E. W. Knight.....	1559	967
Colloquy between examiner and counsel.....	1570	974
Exhibit No. 61—Map of New River coal terri- tory	1572	974
Exhibit No. 62—Statement of average distances from mines.....	1573	975
Exhibit No. 63—Map of Western Maryland Railway and connections.....	1574	976
Exhibits Nos. 64 and 65—Statements showing coal-car allotments.....	1575	976
Petition for reopening, etc.....	1578	980
Reply to petition for reopening.....	1602	996
Order denying petition for reopening.....	1618	1007
Petition for reopening, etc.....	1619	1008
Answers to petition for reopening.....	1626	1011
Order denying petition for reopening.....	1645	1024
Petition for modification of order.....	1646	1024
Order allowing modification.....	1650	1026
Certificate of the secretary of the Interstate Com- merce Commission (omitted in printing).....	1651	
Complaint	1652	1027
Answer of Chicago and Eastern Illinois Ry. Co., etc.	1667	1036
Answer of Detroit and Mackinac Ry. Co.....	1669	1037
Answer of Fort Wayne, Cincinnati and Louisville Railroad Co. et al.....	1670	1038
Answer of Illinois Central Railroad Co.....	1673	1040
Answer of Pennsylvania Railroad Co. et al.....	1674	1041
Answer of Louisville and Nashville Railroad Co....	1676	1042
Answer of Chicago, Indianapolis and Louisville Ry. Co.	1678	1043
Answer of Chicago, Burlington and Quincy Railroad Co.	1679	1044
Answer of Chicago, Peoria and St. Louis Railroad Co.	1681	1045
Answer of Atchison, Topeka and Santa Fe Ry. Co.,	1682	1046

INDEX

v

	Original	Print
Answer of Erie Railroad Co. and Chicago and Erie Railroad Co.....	1684	1047
Answer of Chicago and North Western Ry. Co....	1685	1048
Answer of Chesapeake and Ohio Ry. Co.....	1686	1049
Answer of Chicago, Milwaukee and St. Paul Ry. Co.	1688	1050
Answer of Elgin, Joliet and Eastern Ry. Co.....	1689	1051
Answer of Grand Trunk Western Ry. Co., Detroit and Huron Ry. Co, and Pontiac, Oxford and Northern	1692	1053
Answer of Chicago, Kalamazoo and Saginaw Ry. Co. et al.....	1693	1054
Answer of Minneapolis and St. Louis Railroad Co.,	1694	1054
Answer of Chicago, Rock Island and Pacific Railway Co.....	1695	1055
Answer of Southern Ry. Co., Kentucky and Indiana Terminal Railroad Co., and Chesapeake Steamship Co.....	1696	1056
Answer of Norfolk and Western Railway Co.....	1698	1057
Statement of evidence.....	1699	1057
Testimony of C. H. Hix.....	1699	1058
J. E. Crawford.....	1702	1061
S. M. Adsit.....	1705	1063
W. T. Tams, Jr.....	1712	1069
Petition for appeal.....	1714	1070
Assignment of errors.....	1715	1071
Order allowing appeal.....	1717	1072
Citation and service.....(omitted in printing) ..	1718	
Notification of appeal.....	1720	1073
Bond for costs.....(omitted in printing) ..	1724	
Bond on appeal.....(omitted in printing) ..	1726	
Precipe for transcript of record.....	1728	1075
Petition for cross-appeal by the United States and the Interstate Commerce Commission.....	1730	1076
Assignment of errors on cross-appeal.....	1732	1077
Order allowing cross-appeal.....	1734	1078
Citation and service on cross-appeal (omitted in printing)	1735	
Clerk's certificate to record.....(omitted in printing) ..	1736	
Order extending time for filing transcript.....	1737	1079
Statement of points to be relied upon and designation by appellant to print the entire record.....	1738	1079
Statement of points to be relied upon by cross appellants..	1740	1081

[fol. 1158]

EXHIBIT No. 10

Copy

Docket 13832

Richmond, Va., August 12, 1921.

McKell Coal & Coke Company versus The Chesapeake and
Ohio Railway Company, I. C. C. Docket No. 12631

Mr. Francis B. James, Attorney-at-law, Washington, D. C.

DEAR SIR: Referring to my letter to you dated August 6th, I enclose copy of the working agreement of May 21, 1914, covering reciprocal agency operations in part of the New River District, to-wit:

1. Piney River & Paint Creek Railroad, C. & O. Line.
2. Pemberton and Westwood, Forest Junction and Woodpeck, C. & O. Line.
3. Pemberton and Sphia, C. & O. Line.
4. Pemberton and Beekley, C. & O. Line.
5. Price Hill Division of the White Oak Railway, C. & O. Line.
6. Wolf Creek Division of the White Oak Railway, Virginian Line.
7. Wierwood and Bishop, Virginian Line.
8. Glen White mine on Virginian Line.

This is the only so-called formal working agreement between the two lines, and you will note it does not cover all the operations.

Informal agreements are in effect, however, for the operations and I have, therefore, had prepared a memorandum of Virginian and Chesapeake & Ohio trackage and operating agreements in the New River District covering all operations where the Virginian operates for itself as principal and as agent for the C. & O., and where the C. & O. operates [fol. 1159] for itself as principal and as agent for the Virginian. This memorandum, you will note, contains the terms under which the operations are now performed.

These working arrangements harmonize with the trackage agreement of November 1, 1917, Exhibit 46-B, and the agreement of May 10, 1916, Exhibit 46-C.

You will note that the agreements represented by Exhibits 46-B and 46-C were made long after the working agreement, above referred to, of May 21, 1914. You will further note that the rates shown in the working agreement of May 21, 1914, have been materially changed, and the current amounts paid by one line to the other as representative of operating expenses where the settlement is made on a per car basis for accounting convenience are specified in the memorandum.

You will also note that attached to the memorandum are two statements showing amounts paid by one line to the other in the year 1920 to cover its share of operating expenses. You will recall that Mr. Bock testified that the per car basis was devised for the purposes of convenient accounting and quick settlement; otherwise it would have been necessary to wait before settlement could have been made under the agency operations until all the primary accounts had been closed; and you will further recall that Mr. Bock stated that in fixing the per car amounts to be paid by one line to the other the amounts were so calculated as to amount to a set-off, so that, in the ultimate analysis, the results would be the results had the primary accounts been used on a basis of actual cost rather than a per car charge.

You will note, however, that, as a matter of fact, the arrangement so operates that the C. & O. is a large beneficiary and that the per car arrangement would seem now to operate to relieve the C. & O. of a large portion of the cost of handling its cars between Wierwood and Carlisle and on Stone Coal.

I have had considerable difficulty in working out this information for you, and the delay has been wholly due to [fol. 1160] the fact that during Federal control some of these arrangements were canceled temporarily, and it was necessary for me to have the General Manager deputize a special agent to go into the matter thoroughly, otherwise, I would not have felt certain that you had the correct information, and this took time.

In this connection, you will recall you also requested Virginian maintenance bills between Wierwood and Oak Hill Junction on the Wolf Creek (White Oak) Division of

the Virginian, between Oak Hill Junction, Lochgelly and Carlisle, and on Stone Coal. Our Accounting Department has now located all the 1920 Virginian bills and is abstracting the maintenance portion of the bills, which they have promised to let me have sometime today and which I will send to you, with copy to the Commission, either tonight, or certainly tomorrow.

I trust this data will meet your requirements, and if the delay in getting them to you will make it a hardship to have to file your brief by the 30th of this month, the day now set, I will be glad to request the Commission to further extend the time ten or fifteen days, explaining to the Commission that the extension is necessary by reason of the unavoidable delay in getting this information to you.

Yours very truly, (Signed) W. S. Bronson, General Attorney.

cc. Mr. George B. McGinty, Secretary Interstate Commerce Commission, Washington, D. C.

Attention Attorney-Examiner Mr. Paulson

Whereas, on the 30th day of November, 1912, a working agreement in connection with the contract between The Chesapeake and Ohio Railway Company and the Virginian Railway Company, dated November 12th, 1912, was entered into by the respective parties, and [fol. 1161] Whereas, some changes have been made from time to time, and it is desirable to put the same working agreement, as it now exists, into definite form, where it is readily accessible:

Now, therefore, said agreement is reformed, this 21st day of May, 1914, so as to read as follows:

1st. The Piney River and Paint Creek Railroad to be operated under the jurisdiction of the C. & O. Ry. for joint account; i. e., for the account of the C. & O. and Virginian Ry. Companies, jointly. The joint passenger service operated on this line to be operated for joint account, except in the case of the Virginian passenger train which will operate between Mullens and Beckley. The expense between Beckley Jct. and Beckley shall be borne by the Virginian Railway and the revenue of these trains between

Beckley Jet. and Beckley will accrue to the Virginian Railway.

The freight business of the Piney River and Paint Creek Railroad to be operated for joint account.

2nd. The C. & O. will handle the freight business, for the Virginian Railway, between Pemberton and Westwood, and between Forest Jet. and Woodpeck, charging for the switching service \$2.00 per loaded car—no charge for empties.

3rd. Should the C. & O. engines handle loads for the Virginian Railway from Pemberton to Sophia and empties from Sophia to Pemberton, the Virginian Railway will pay the C. & O. Railway for such service at the rate of \$4.00 per hour.

4th. The Virginian Railway to operate passenger service between Mullens and Beckley. The Virginian Railway to receive all revenue, excepting that the C. & O. shall receive 60% of fares collected from passengers between local stations on the C. & O. Railway, as provided in Article 5, of page 12, of the agreement.

5th. A suitable passenger and freight station, the plans of which shall be approved by the representatives of both companies, shall be provided at Pemberton at the joint cost of the C. & O. and the Virginian Railway Companies. Suitable house tracks, and tracks for the interchange of business other than coal and coke to be also provided at joint cost [fol. 1162] of the C. & O. and Virginian Railway Companies.

6th. The Price Hill Division of the White Oak Railway shall be operated under the jurisdiction of the C. & O. Railway Co. for joint account, the C. & O. to handle business for the Virginian Railway at a switching charge of Seventy-Five Cents (\$0.75) per loaded car—no charge for empties. Business for the Virginian Railway to be delivered to and received from the G. G. J. & E. Railway at or near Price Hill Jet.

Passenger service on the Price Hill Division to be performed by the C. & O. Railway Company, the C. & O. Railway Company to pay the expense and receive all the revenue therefrom.

7th. The Wolf Creek Division of the White Oak Railway shall be operated under the jurisdiction of the Virginian Railway for joint account.

8th. The Wolf Creek Branch passenger train service will be operated for joint account, and will operate to White Oak Junction over C. & O. tracks; and 60% of the revenues accruing between Carlisle and White Oak Jet. to be paid to the C. & O. Railway Company. The joint account to be at all transportation expense in connection with operation of this service over C. & O. Tracks.

9th. The freight business of the Wolf Creek Division will be operated jointly for joint account.

10th. Coal and Coke for the Virginian Railway from Scarbro and Wingrove will be delivered to the White Oak Railway at Carlisle by the C. & O. Railway Company. The White Oak Ry. to interchange C. & O. Railway freight business at Carlisle.

11th. The White Oak Railway to interchange Virginian Railway freight business at Bishop or Oak Hill. At Carlisle, a suitable station and depot tracks to be provided, to be operated jointly, The C. & O. Railway Company to pay one-half the operating costs, and the White Oak Ry. to pay half the operating cost for joint account. Suitable interchange tracks to be provided at Carlisle.

[fol. 1163] 12th. The Virginian Railway Company will handle coal and coke for the Chesapeake and Ohio Railway Company between Wierwood, W. Va., and Bishop, W. Va., charging for such switching service Two Dollars (\$2.00) per loaded car—no charge for empties; it being understood that Article IV of the agreement between the parties hereto, dated November 12th, 1912, will be in full effect as to rental, maintenance, and other charges from the time and date of the commencement of such switching service by the Virginian Railway Company.

13th. The Virginian Railway will switch cars to and from Glen White mine for the C. & O. Railway, charging for the switching service Seventy-Five Cents (\$.75) per loaded car—no charge for empties.

14th. Cars furnished by the Virginian and cars furnished by the C. & O. on the lines of each other or on the lines of

the Piney River and Paint Creek and White Oak Railway Companies for coal and coke loading as contemplated under this agreement, will be exempt from per diem, and will not be reported on interchange reports.

15th. Cars and engines handled by the Raleigh Lumber Company or the Raleigh & Southwestern or Piney Creek Branch to be charged to the C. & O. account, two logging cars to count as one car.

The Chesapeake and Ohio Railway Company, by Geo. P. Johnson, General Manager. The Virginian Railway Company, by J. Berlingett, Asst. General Manager.

Approved as to form. H. T., Jr., General Solicitor.

[fol. 1164] Memorandum of Virginian-Chesapeake & Ohio Trackage and Operating Agreements

Eccles

Virginian operates and maintains.

C. & O. does not participate in maintenance or operating expenses.

C. & O. pays Virginian \$7.00 per loaded car delivered to C. & O. connections.

Glen White

Virginian owns and maintains Shockley Branch for approximately one mile above C. & O. connection.

Tracks beyond and at mine are owned and maintained by E. E. White Coal Company.

Maintenance expenses, taxes and interest on capital investment on Virginian track is pro rated between C. & O. and Virginian on car handled basis.

C. & O. pays Virginian \$3.00 per car for loads delivered from mine to C. & O. connections.

Piney River and Paint Creek Railway (Beekley Jet. to Prosperity)

C. & O. owns, operates and maintains, maintenance expenses, operating expenses, taxes and interest on capital investment are pro rated between C. & O. and Virginian on cars handled basis.

Piney Branch, Westwood to Pemberton

C. & O. owns, operates and maintains.

Maintenance expenses, station expenses and salaries of Agents, Yard Masters and Car Report Clerks at Raleigh, taxes and interest on capital investment are pro rated between C. & O. and Virginian on cars handled basis.

Virginian pays C. & O. \$6.00 per loaded car delivered to Virginian at Pemberton.

C. & O. receives \$6.00 per car for moving Virginian loads originating on Piney River & Paint Creek Railway, from Beckley Junction to Pemberton.

Virginian passenger trains operate two round trips per day, Pemberton Beckley.

C. & O. receives 60% Virginian 40% of revenue collected locally Pemberton to Beckley Junction, (Piney River & Paint Creek Joint account).

[fol. 1165]

Stone Coal Branch

Owned jointly by C. & O. and Virginian Railways.

Virginian operates and maintains. Maintenance expenses, station expenses, taxes and interest on capital investment are pro rated between C. & O. and Virginian on cars handled basis.

C. & O. pays Virginian \$6.00 per car for loads delivered to C. & O. connection at Stone Coal Junction.

On solid car-load shipments from points on C. & O. to points on Stone Coal Branch, C. & O. receives all revenue and pays Virginian \$6.00 per loaded car for deliveries from Stone Coal Junction to points on Stone Coal Branch.

Price Hill Division White Oak Railway (Price Hill to Sugar Creek)

C. & O. owns, operates and maintains. Maintenance expenses, taxes and interest on capital investment is pro rated between C. & O. and Virginian Railway on cars handled basis.

Virginian pays C. & O. \$3.00 for loads delivered K. G. J. & E. connection at Sugar Creek.

White Oak Branch, White Oak Junction to Carlisle

C. & O. maintains and operates.

Virginian does not participate in maintenance or operating expenses. (Off-set for Eccles).

Virginian pays C. & O. \$7.00 per loaded car delivered to Virginian connection at Carlisle.

Wolf Creek Division, White Oak Branch (Carlisle to Bishop and Lochgelly)

Virginian owns, operates and maintains.

Maintenance expenses, operating expenses, taxes and interest on capital investment are pro rated between C. & O. and Virginian on cars handled basis.

Bishop to Weirwood

Virginian owns, operates and maintains.

Maintenance expenses, agents expenses, taxes and interest on capital investment is pro rated between the C. & O. and Virginian Railway on cars handled basis.

C. & O. pays Virginian \$6.00 per loaded car delivered from Weirwood to Bishop.

[fol. 1166] Record of loaded cars moved by Virginian, acting as agent for the Chesapeake and Ohio, under trackage and concomitant operating agreements entered into to avoid unnecessary and uneconomical duplication of train service and to facilitate the accounting of operating Expenses, from Virginian-Chesapeake and Ohio Joint mines, year 1920, and the agreed amounts paid the Virginian by the Chesapeake and Ohio as Virginian operating expenses.

(Cars Shown Bases on 50-Ton Car Basis)

Vanwood	350 @ 6 00	\$2,100 00
Besoco	147 @ 6 00	882 00
Clyde Poca	76 @ 6 00	456 00
Lego	103 @ 6 00	618 00
Laurel Smoke	83 @ 6 00	498 00
Lillybrook 1	46 @ 6 00	276 00
C. H. Meed 1	494 @ 6 00	2,964 00

MAPS

TOO

LARGE

FOR

FILMING

Killarney	941 @ 6 00	5,646 00
Pickshin	329 @ 6 00	1,974 00
Princewick	581 @ 6 00	3,486 00
Weirwood	899 @ 6 00	5,394 00
Eccles 3	1,096 @ 7 00	7,672 00
Eccles 5	1,451 @ 7 00	10,157 00
Eccles 6	778 @ 7 00	5,446 00
	<hr/>	
	7,374	\$47,569 00

Record of loaded cars moved by Chesapeake and Ohio, acting as agent for the Virginian, under trackage and concomitant operating agreements entered into to avoid unnecessary and uneconomical duplication of train service and to facilitate the account of operating expenses, from Chesapeake and Ohio-Virginian joint mines, year 1920, and the agreed amounts paid the Chesapeake and Ohio by the Virginian as Chesapeake and Ohio operating expenses.

(Cars Shown Based on 50-ton Car Basis)

[fol. 1167] Raleigh 1	57 @ 6 00	\$342 00
Raleigh 3	818 @ 6 00	4,908 00
Raleigh 5	98 @ 6 00	588 00
Raleigh 6	2,288 @ 6 00	13,728 00
Crab Orchard	162 @ 6 00	972 00
Viacova	109 @ 6 00	654 00
Beckley	1,221 @ 6 00	7,326 00
Cranberry 1	1,282 @ 6 00	7,692 00
Cranberry 2	1,090 @ 6 00	6,540 00
Cranberry 3	1,924 @ 6 00	11,544 00
Mabscott	810 @ 6 00	4,860 00
Scarbro	1,552 @ 7 00	10,864 00
Whipple	857 @ 7 00	5,999 00
Price Hill	588 @ 3 00	1,764 00
	<hr/>	
	12,856	\$77,781 00

(Here follows Exhibit 11, map, side folio page 1168.)

Witness Williamson

Statement comparing average distance from coal-shipping stations on Virginian Railway in New River district to Kenova, W. Va., with average distances to same destinations from coal-shipping stations on Chesapeake & Ohio Railway in New River district, from coal-shipping stations on Norfolk & Western Railway in Pocahontas, Tug River, and Clinchfield Nos. 1 and 2 districts and from coal-shipping stations on the Carolina, Clinchfield & Ohio Railway in Virginia from which Chesapeake & Ohio Railway publishes New River District rates.

From	Distance to Kenova, W. Va.
Virginian Railway New River District.....	154.7
C. & O. Ry., New River District	131.8
C. & O. Ry., New River District (including Sewell Valley R. R. Stations).....	132.6
C. C. & O. Ry. Stations (from which C. & O. Ry. pub- lishes New River District Rates).....	*176.3

Norfolk & Western Railway Stations:

Pocahontas District	165.4
Tug River District	136.1
Clinch Valley No. 1 District	180.7
Clinch Valley No. 2 District.....	212.3

Average N. & W. Ry. Districts 169.1

NOTE.—Common rates are published on bituminous coal to destinations in C. F. A. territory generally from all the above named districts with the exception of the Virginian Railway New River District from which no joint through rates apply.

Tariff Authorities: C. & O. Ry. tariffs I. C. C. Nos. 8665, 8385, and 8367, Virginian Ry. tariffs I. C. C. Nos. 1374 and 1527. C. C. & O. Ry. tariff I. C. C. No. 922. Norfolk & Western Ry. tariffs I. C. C. Nos. 4811 and 2802-B.

*Distance to Catlettsburg, Ky.

[fol. 1170] Coal Shipping Stations in New River District
on Virginian Railway

From		Distance to	
		Deep- water, W. Va.	Kenova, W. Va.
Matoaka	W. Va.	79	169
America	"	75	165
Weyanoke	"	77	167
Algonquin	"	74	164
Micajah	"	72	162
Coval	"	70	160
Herndon	"	68	158
Montecarlo	"	67	157
Bud	"	65	155
Alpoa	"	63	153
Tralee	"	62	152
M-P-Tipple	"	61	151
Mullens	"	59	149
Tracoal	"	58	148
Caloric	"	57	147
Otsego	"	56	146
Glen Rogers	"	70	160
Slab Fork	"	48	138
Lester	"	43	133
Glen White	"	41	131
Metalton	"	39	129
Eccles	"	37	127
Willis Branch	"	28	118
Weirwood	"	27	117
Long Branch	"	26	116
Lick Fork	"	16	106
Summerlee	"	22	112
Lochgelly	"	24	114
Carlisle	"	22	112
Oakwood	"	23	113
Corinne	"	61	151
Iroquois	"	64	154
Devils Fork	"	65	155
Helen	"	69	159
Tams	"	72	162
Stotesbury	"	74	164
MacAlpin	"	75	165

From		Distance to	
		Deep- water, W. Va.	Kenova, W. Va.
Woodbay	W. Va.	75	165
Big Stick	"	76	166
Hot Coal	"	77	167
Affinity	"	82	172
Pemberton	"	83	173
McVey	"	84	174
Sullivan	"	85	175
Wiley	"	86	176
Phillips	"	86	176
Abney	"	86	176
Whithy	"	87	177
Ralco	"	88	178
Jonben	"	89	179
Fireco	"	90	180
Wyco	"	64	154
Amigo Mine	"	68	158
Tommy Creek	"	68	158
Rhodell	"	69	159
Francis	"	69	159
East Gulf	"	71	161
Killarney	"	72	162
Vanwood	"	73	163
Besoco	"	74	164
Lego	"	74	164
Pickshin	"	75	165
Lillybrook	"	76	166
Prince-Wick	"	77	167
Mistletoe	"	79	169
Winding Gulf	"	80	170
Total		4,272	10,212
Average Distances		64 7	154 7

[fol. 1171] Coal Shipping Stations in New River District
on Chesapeake & Ohio Railway and Sewell Valley Rail-
road

From		Distance to	
		Deep- water, W. Va.	Kenova, W. Va.
Meadow Creek	W. Va.	52	141.7
Glade	"	47.3	137.0
Rippetoe	"	44.2	133.9
Quinnemont	"	42.9	132.6
Prince	"	41.7	131.4
McKendree	"	38.5	128.2
Thayer	"	36.6	126.3
Claremont	"	33.8	123.5
Beechwood Jet.	"	33	122.7
Stone Cliff	"	32.5	122.2
Thurmond	"	30.8	120.5
Dimmock	"	29.4	119.1
Rush Run	"	29.2	118.9
Echo	"	28.6	118.3
Beury	"	28.4	118.1
Fire Creek	"	27.1	116.8
Pennbrook	"	26.4	116.1
East Sewell	"	25.2	114.9
Sewell	"	24	113.7
South Caperton	"	22.6	112.3
Elverton	"	21.7	111.4
Keeney's Creek	"	21.2	110.9
South Nuttal	"	20.7	110.4
Nuttal	"	20	109.7
Kaymoore No. 1	"	19	108.7
Fayette	"	17.3	107
South Fayette	"	16.8	106.5
Newlyn	"	16.7	106.4
Michigan	"	16.1	105.8
Elmo	"	16	105.7
Sunnyside	"	14.8	104.5
Whitney	"	14.8	105.5
Gaymont	"	14	103.7
Bachman	"	13.6	103.3

From		Distance to	
		Deep- water, W. Va.	Kenova, W. Va.
Hawks Nest	W. Va.	13	102.7
Gauley	"	6.4	96.1
Ft. Defiance	"	5.6	95.3
Old Gauley	"	5.5	95.2
Simpson	"	22.8	112.5
Boone	"	27	116.7
Ballenger No. 2	"	27.6	117.3
Ballenger No. 1	"	28.1	117.8
Dubree	"	28.2	117.9
Masters	"	28.3	118
Rothwell	"	28.9	118.6
Blume	"	29.7	119.4
Lookout	"	30.2	119.9
Pinepoca	"	50.8	140.5
Rodes	"	51.9	141.6
Whorley	"	62.9	142.6
McQuade	"	55	144.7
Blue Jay Jet.	"	54.9	144.6
Glen Morgan	"	55	144.7
Raleigh	"	55.3	145
Raleigh & S. W. Jet.	"	55.4	145.1
West Raleigh	"	55.8	145.5
Beckley Jet.	"	57.8	147.5
Mabscott	"	58.1	147.8
Mabscott Mine	"	58.3	148
Bickell	"	58.5	148.2
Cabell	"	60.1	149.8
Burks	"	60.7	150.4
Admiralty	"	62.7	152.4
Metalton	"	63.7	153.4
Baylor	"	65.3	155
Surveyor	"	67.1	156.8
Hoo Hoo	"	68.7	158.4
Lester	"	69.3	159
Raleigh No. 6	"	56.4	146.1
Fitzpatrick	"	57.6	147.3
Tolbert	"	57.7	147.4
Spangler Mill	"	59.2	148.9
Viacova	"	59.5	149.2

From		Distance to	
		Deep- water, W. Va.	Kenova, W. Va.
Forest	W. Va.	60 5	150 2
McVey	"	61 4	151 1
Sullivan	"	62 5	152 2
Woodpeck	"	63 3	153
Pemberton	"	60 8	150 5
Affinity	"	61 9	151 6
Winding Gulf No. 2	"	63 9	153 6
Deihl	"	63 4	153 1
Gulf Switch	"	64 3	154
Hot Coal	"	66 1	155 8
MacAlpin	"	67 9	157 6
Stotesbury	"	68 9	158 6
Tams	"	70 1	159 8
Ury	"	71 1	160 8
Stonecoal	"	75 2	164 9
Rodell	"	76 5	166 2
East Gulf	"	78 6	168 3
Killarney	"	79 7	169 4
Vanwood	"	80 5	170 2
Besoco	"	81 4	171 1
Lego	"	82 1	171 8
Pickshin	"	83 0	
Lillybrook	"	83 7	173 4
Beckley	"	59 0	148 7
Sprague	"	60 0	149 7
Skelton	"	62 3	162
Prosperity	"	63 8	153 5
Royal	"	42 2	131 9
Terry Jct.	"	43 1	132 8
Terry	"	43 6	133 3
Auchmesty	"	44 2	133 9
Norvell	"	44 7	134 4
Wright	"	45 1	134 8
Stonewall	"	46 9	136 6
Lanark	"	47 3	137
Stansford	"	47 7	137 4
Dorsey	"	48 1	137 8
Knot Branch	"	49 1	138 8
White Stick	"	49 7	139 4

From		Distance to	
		Deep- water, W. Va.	Kenova, W. Va.
Boyd	W. Va.	32 1	121 8
Minden No. 2	"	33 5	123 2
Minden No. 5	"	34	123 7
Minden No. 3 and 4	"	35	124 7
Minersville	"	36 1	125 8
South Side Jet.	"	31 1	120 8
Cadle Ridge	"	32 6	122 3
Meadow Fork	"	33 2	122 9
Dewitt	"	35	124 7
Harvey	"	35 9	125 6
[fol. 1172] Prudence	"	36 4	126 1
Red Star	"	36 7	126 4
Glen Jean	"	37 3	127
White Oak Jet.	"	37 9	127 6
Nichol	"	38 1	127 8
Wingrove	"	39 1	128 8
Scarboro	"	40 1	129 8
Whipple	"	40 3	130
Carlisle	"	41 5	131 2
Oakwood	"	41 8	131 5
Sun	"	38 2	127 9
Derryhale	"	39 1	128 8
Dunloup	"	39 5	129 2
Turkey Knob	"	39 9	129 6
Macdonald	"	40 3	130
Price Hill Jet.	"	40 5	130 2
Kilsythe Jet.	"	40 7	130 4
Dun Glen	"	31 7	121 4
South Bend	"	31 8	121 5
Sugar Creek	"	41	130 7
Weervin	"	31 5	121 2
Concho	"	31 6	121 3
Erskine	"	32 1	121 8
South Rush Run	"	33 5	123 2
Red Ash	"	35 1	124 8
Brooklyn	"	36 4	126 1
Cunard	"	37 6	127 3
Mt. Hope	"	41	130 7
Sherwood	"	42 1	131 8

From		Distance to	
		Deep- water, W. Va.	Kenova, W. Va.
Price Hill	W. Va.	42 3	132
Ansted	"	16 5	106 2
K. & M. Jet.	"	7 9	197 6
Vanette	"	8 9	98 6
Gamoca	"	10 5	100 2
Wyndal	"	12 6	102 3
Rich Creek Jet.	"	13 3	103
Buck Run	"	14 9	104 6
Bryce	"	16	105 7
Marshall	"	16 3	106
Coke Ovens	"	43 7	133 4
Export	"	46	135 7
Laurel	"	46 7	136 4
Glendale	"	47 3	137
Big Q	"	47 7	137 4
Brownwood	"	47 9	137 6
Hemlock Hollow	"	48 2	137 9
Layland	"	48 6	138 3

Grand total	7,116 4	22,275 4
-------------	---------	----------

Average distance	42 1	131 8
------------------	------	-------

Via Meadow Creek, Sewell Val. R. R.:

Benrytown	W. Va.	54 5	144 2
Claypool	"	56	145 7
Hawley	"	63	152 7
Bellwood	"	68	157 7
Rainelle	"	73	162 7
Dwyer	"	74	163 7

Grand total (including S. V. R. R.)	7,504 9	23,202 1
--	---------	----------

Average distance (including S. V. R. R.)	42 9	132 6
---	------	-------

[fol. 1173] Coal Shipping Stations on Carolina, Clinchfield
& Ohio Railway Taking New River District Rates

From		Distance to	
		Elkhorn City, Ky.	Catlettsburg, Ky.
Burtens Ford	Va.	46	174 6
Carfax	"	49	177 6
Clinchfield	"	54	182 6
Clinchfield Yards	"	54	182 6
Dante	"	35	163 6
Dungannon Lumber Co.	"	56	184 6
Hamlin	"	39	167 6
Hanging Rock	"	39	167 6
Ledebur	"	47	175 6
Lednam	"	60	188 6
Shannon	"	48	176 6
St. Paul	"	42	170 6
Wilder	"	61	189 6
Total		630	2,291 8
Average Distance		48 5	176 3

[fol. 1174] Coal-shipping Stations on Norfolk & Western
Railway

Pocahontas District:

From		Distance to Kenova, W. Va.
Algonquin	W. Va.	191
Alpheus	"	151
Anawalt	"	163
Angle	"	166
Ashland	"	164
Beech Fork	"	153
Berwind	"	150
Big Four	"	150
Boissevain	Va.	174
Booth	W. Va.	175
Bramwell	"	173
Bunch	"	167

From	Distance to Kenova, W. Va.
Cane Brake	W. Va. 151
Coaldale	" 167
Coon	" 173
Cooper	" 171
Carswell	" 154
Crumpler	" 165
Droit	" 157
Duhring	" 178
Eckman	" 156
Elbert	" 154
Elkhorn	" 161
Ennis	" 163
Faraday	Va. 155
Filbert	W. Va. 156
Gary	" 152
Giatto	" 187
Godfrey	" 180
Goodwill	" 179
Havaco	" 147
Hartwell	" 152
Hiawatha	" 189
Jeanette	" 163
Jenkin Jones	" 167
Keystone	" 157
Kimball	" 153
Krag	" 166
Keero	" 158
Kyle	" 159
Landgraff	" 155
Leckie	" 165
McComas	" 183
Matvaka	" 186
Maybeury	" 164
Montcalm	" 179
New Hall	" 151
North Fork	" 158
Olivette	" 172
Orkney	" 175
O'Toole	" 164
Pageton	" 160

From	Distance to Kenova, W. Va.
Pocahontas	Va. 171
Powhatan	W. Va. 160
Ream	" 153
Rock	" 181
Ruth	" 168
Simmons	" 173
Springton	" 190
Thorpe	" 156
Venus	" 154
Vivian	" 153
Welch	" 145
Wenonah	" 191
Weyanoke	" 187
Wide Mouth	" 190
Wilcoe	" 150

Total	11,081
-----------------	--------

Average distance	163 4
----------------------------	-------

Tug River District:

Atwell	W. Va.	136
Bradshaw	"	133
Caples	"	142
Claren	"	134
Coalwood	"	137
Davy	"	137
Deegans	"	139
English	"	140
Erin	"	134
Hemphill	"	144
Iaeger	"	122
Juno	"	145
Marytown	"	135
Mile Branch	"	126
Premier	"	136
Rift	"	148
Ritter	"	127
Robley	"	132
Roderfield	"	131
Susanna	"	143

From		Distance to Kenova, W. Va.
Twin Branch	"	138
War	"	143
Wilmore	"	126
Yerba	"	139
Total		3,267
Average Distance		136.1

Clinch Valley District No. 1:

Bailey	Va.	191
Blackford	"	191
Burks Garden	"	185
Cedar Bluff	"	167
Doran	"	172
Finney	"	191
[fol. 1175] Five Oaks	"	186
Gardner	"	183
Gillespie	"	173
Hockman	"	185
Honaker	"	186
Jewel	"	177
Lark	"	175
Maxwell	"	177
Pisgah	"	180
Pounding Mill	"	181
Putnam	"	185
Raven	"	173
Red Ash	"	175
Reep	"	190
Richlands	"	170
St. Clair	"	187
Seaboard	"	174
Swords Creek	"	181
Tazewell	"	183
Tip Top	"	192
Wittens Mill	"	187
Zeal	"	173
Total		5,060
Average distance		180.7

Clinch Valley District No. 2:

From	Distance to Kenova, W. Va.
Artrip	195
Banner	219
Boody	208
Carterton	202
Castlewood	206
Cleveland	197
Coeburn	221
Greeno	225
Kiser	200
Loxa	227
Norton	233
Pine	218
St. Paul	209
Tacoma	226
Toms Creek	224
Viceo	214
Virginian City	213
Wards	192
Zack	205
Total	4,034
Average distance	212 3
Grand total all districts	23,442
Average distance all districts	169.09

[fol. 1176]

EXHIBIT No. 13

Witness Williamson

Statement comparing most-distant coal-shipping station on Virginian Railway in New River District with most-distant coal-shipping station on C. & O. Ry. in New River District, Norfolk & Western Railway in its outer crescent districts, and Carolina, Clinchfield & Ohio Railway in its district taking New River District rates.

	From	Distance to Kenova, W. Va.
District	Shipping station	
C. & O. New River . . .	Lillybrook, W. Va.	173.4
C. C. & O. Railway . . .	Wilder, Va.	190
N. & W. Pocahontas . . .	Algonquin, W. Va.	191
N. & W. Tug River . . .	Rift, W. Va.	148
N. & W. Clinch. No. 1. .	Tip Top, Va.	192
N. & W. Clinch. No. 2. .	Norton, Va.	233
Virginian New River. .	Fireco, W. Va.	180

Tariff Authorities:

C. & O. tariffs I. C. C. Nos. 8385, 8367, and 8665.
 N. & W. tariffs I. C. C. Nos. 4811 and 2802-B.
 Virginian tariffs I. C. C. Nos. 1374 and 1527.
 C. C. & O. tariff I. C. C. No. 922.

Witness Williamson

Statement showing average distances, separately and combined from coal-shipping stations on C. & O. Ry. in Kanawha District Group No. 2, Kanawha District Group No. 3, Kentucky District Group No. 4, and Big Sandy District Group No. 5 (including main line, branches, and sub-branches) to Cincinnati, Ohio; also average distances from stations on Sandy Valley & Elkhorn Railway, Long Forks Railway, and Carolina, Clinchfield & Ohio Railway to Cincinnati, which stations take same rates to C. F. A. territory generally as C. & O. Ry. stations in Groups 2, 3, 4, and 5.

From	To Cincinnati, miles
C. & O. Ry., Stations, Group No. 3	234.8
C. & O. Ry., Stations, Group No. 3	242.2
C. & O. Ry., Stations, Group No. 4	168.6
C. & O. Ry., Stations, Group No. 5	252.4
C. & O. Ry., Stations, Groups Nos. 2, 3, 4 and 5 combined	230.6
Sandy Valley & Elkhorn Ry., Stations	282.2
Long Forks Railway Stations	253.3
C. C. & O. Ry., Stations, taking Group 5 rates	292.9

NOTE.—Distances are shown in working sheets from each Station in C. & O. Ry., Groups 2, 3, 4 and 5 and also from S. V. & E. Ry., Long Fork Ry. and C. C. & O. Ry., Stations to South Portsmouth, Ky. Distance from South Portsmouth to Cincinnati is 114.5 miles.

Tariff References:

C. & O. Ry. Distances from C. & O. tariff I. C. C. 8367.
C. & O. Ry. coal shipping stations from C. & O. tariff I. C. C. 8385.

S. V. & E. Ry. and L. F. Ry. distances from Official Guide.
C. C. & O. Ry. Distances from C. C. & O. tariff I. C. C. No. 922.

Rates named in C. & O. tariff I. C. C. 8665, Supp. No. 21.

[fol. 1178] From Coal-shipping Stations in C. & O. Ry.,
Kanawha Dist. No. 2

From (main-line stations)	Distance to South Portsmouth
Deepwater.....W. Va..	128.8
Mt. Carbon.....“ ..	126.8
Powelton Jet.....“ ..	125.6
St. Clair.....“ ..	125.3
Eagle	125.1
Edgewater	124.5
Crescent	123.8
Montgomery	122.9
Morris Creek Jet.....“ ..	122.2
Consolidated	121.7
Handley	120.8
Pratt	118.6
Hausford	117.6
Crown Hill.....“ ..	116.9
Belfrede	116.3
Black Cat	115.4
East Bank	114.8
Coalburg	112.9
Cabin Creek Jet.....“ ..	112.3
Chelyan	111.9
Winifrede Jet.....“ ..	109.8
Chesapeake	108.8
Marmet	105.9
South Malden.....“ ..	102.2
Charleston	96.8
Total	2,927.7

Via Mt. Carbon

		Mt. Carbon	South Portsmouth
Kimberly	W. Va.	1.7	128.5
Columbia	" ..	2.0	128.8
Cardiff	" ..	3.4	130.2
Abbotts	" ..	3.5	130.3
Ridenour	" ..	4.1	130.9
Elk Ridge Jet.....	" ..	4.3	131.1
Powellton	" ..	5.1	131.9
Elkridge No. 1.....	" ..	6.7	133.5
Elkridge No. 2.....	" ..	6.9	133.7
Total		113.4	1,178.9

Via Morris Creek Jet.

		Morris Creek Jet.	South Portsmouth
Meece	W. Va.	1.3	123.5
Eureka No. 14.....	" ..	2.1	124.3
Morris Creek.....	" ..	2.8	125.0
Total		45.2	372.8

Via Pratt

		Pratt	South Portsmouth
Scale Yard.....	W. Va..	1.8	120.4
Gallagher	" ..	3.0	121.6
Livingstone	" ..	4.2	122.8
Banner	" ..	5.3	123.9
Standard	" ..	5.1	123.7
Bedford	" ..	5.2	123.8
Glenhuddy	" ..	7.4	126.0
Morton	" ..	8.2	126.8
Nuckolls	" ..	9.5	128.1
Whitaker	" ..	10.5	129.1
Green Castle.....	" ..	11.8	130.4
Burnwell	" ..	12.6	131.2
Imperial No. 2.....	" ..	13.2	131.8
Collinsdale	" ..	14.2	132.8
Mahan	" ..	14.8	133.4
Krebs	" ..	16.4	135.0
Milburn	" ..	16.8	135.4
Westerly	" ..	19.3	137.9
Mossy	" ..	21.0	139.6
Kingston	" ..	21.6	140.2
Total			2,593.9

Via Cabin Creek Jet.

	Cabin Creek Jet.	South Portsmouth
Dry Branch.....W. Va..	1.9	114.2
Ronda	3.6	115.9
Sharon	4.2	116.5
Miama	4.8	117.1
Fairfield	5.2	117.5
Dawes	5.4	117.7
Giles	5.9	118.2
Oakley	6.8	119.1
Coal	7.5	119.8
Ohley	8.6	120.9
Cane Forks.....	9.3	121.6
Eskdale	10.4	122.7
Alum Lick.....	10.8	123.1
Leewood	11.3	123.6
Cherokee	11.6	123.9
Red Warrior Jet	12.5	124.8
Red Warrior.....	12.6	124.9
Keely	15.9	128.2
High Coal.....	17.4	129.7
Ferndale	19.1	131.4
Whitesville	22.8	135.1
Jarrolds Valley.....	23.5	135.8
Pettus	24.5	136.8
Marfork	25.0	137.3
Eunice	25.5	137.8
Emerson	25.8	138.1
Burch	26.6	138.9
Montcoal	28.6	140.9
Leevale	24.0	136.3
Dorothy	27.5	129.8
Sarita	28.1	140.4
Colcord	30.1	142.4
Aeme	13.8	126.1
Kayford	15.5	127.8
Holly	12.2	124.5
Quarrior	13.5	125.8
Wake Forest.....	14.0	126.3

[fol. 1179]

Via Cabin Creek Jet.

Cabin Creek Jet.

		Cabin Creek Jet.	South Portsmouth
Berlin	W. Va..	14.3	126.6
North Carbon.....	" ..	15.0	127.3
Nabob	" ..	15.2	127.5
Decota	" ..	15.9	128.2
W. V. No. 1.....	" ..	16.9	129.2
United	" ..	17.9	130.2
W. Va. No. 2.....	" ..	18.4	130.7
W. Va. No. 4.....	" ..	19.2	131.5
South Carbon.....	" ..	16.6	128.9
Republie No. 1.....	" ..	18.3	130.6
Republie No. 2.....	" ..	18.5	130.8
Republie No. 3.....	" ..	19.1	131.4
Total			6,263.8

Via Gauley

South Portsmouth

		South Portsmouth
Belva	W. Va..	142.5
Open Fork Jet.....	" ..	143.1
Eberbaugh	" ..	143.9
Cambria	" ..	145.0
Mt. Carmel.....	" ..	145.2
National	" ..	145.5
Scotford	" ..	146.4
Bentree	" ..	146.6
Bell Creek.....	" ..	143.3
Vaughan	" ..	148.0
Greendale	" ..	149.2
Total		1,598.7
Grand total.....		14,935.8
Average distance.....		127.7

From Coal-shipping Stations in C. & O. Ry., Kanawha Dist.
No. 3

From (Main Line Stations)

Distance to
South
Portsmouth

Spring Hill..... W. Va.. 91.5

Via St. Albans, W. Va.

St. Albans South
Portsmouth

Indian	W. Va..	2.0	86.9
Upper Falls.....	" ..	6.2	91.1
Alum Creek.....	" ..	12.1	97.0
Forks of Coal.....	" ..	13.2	98.1
Sproul	" ..	15.4	100.3
Brounland	" ..	17.5	102.4
Hollyhurst	" ..	18.0	102.9
Emmons	" ..	20.5	105.4
[fol. 1180] Gripp	" ..	21.5	106.4
Dartmont	" ..	22.8	107.7
Ashford	" ..	24.4	109.3
Brushston	" ..	25.7	110.6
Bradley	" ..	26.7	111.6
Burns	" ..	28.2	113.1
Nellis	" ..	28.4	113.3
Brush Creek.....	" ..	29.7	114.6
Johns	" ..	27.4	112.3
Peytona	" ..	29.2	114.1
Peytona Block No. 2.....	" ..	29.5	114.4
Peytona Block No. 1.....	" ..	30.1	115.0
Myrtle	" ..	30.6	115.5
Racine	" ..	31.1	116.0
Toneys Branch.....	" ..	32.8	117.7
Sharlow	" ..	33.8	118.7
Maxine	" ..	34.5	119.4
Joe Creek.....	" ..	35.0	119.9
Seth	" ..	36.2	121.1
Fred	" ..	39.2	124.1
Orgas	" ..	43.3	128.2
Big Elk Run Jet.....	" ..	48.9	133.8

South
St. Albans Portsmouth

Darby	W. Va.	43.7	128.6
Keith	" ..	43.5	128.4
Mordue	" ..	50.0	134.9
Eudrom	" ..	53.0	137.9
Vass	" ..	31.7	116.6
Bluetom	" ..	16.6	101.5
Dunlapville	" ..	19.7	104.6
MacCorkle	" ..	22.1	107.0
Dice	" ..	22.9	107.8
Ivaton	" ..	24.3	109.2
Altman	" ..	26.6	111.5
Horse Creek Jet	" ..	27.0	111.9
Craft	" ..	27.4	112.3
Woodville	" ..	28.9	113.8
Fork Junction	" ..	29.3	114.2
Alkol	" ..	30.8	115.7
Breece	" ..	31.9	116.8
Morrisvale	" ..	32.5	117.4
Dixo	" ..	33.2	118.1
Silush	" ..	33.9	118.8
Harless	" ..	28.4	113.3
Lory	" ..	29.8	114.7
Rock Creek	" ..	32.8	117.7
Hopkins	" ..	33.9	118.8
Danville	" ..	35.2	120.1
Madison	" ..	37.1	122.0
Haddleton	" ..	40.0	124.9
Low Gap	" ..	40.6	125.5
Powell Creek	" ..	42.3	127.2
Greenview	" ..	44.2	129.1
Ramage	" ..	45.2	130.1
Secoal	" ..	46.3	131.2
Jeffrey	" ..	47.5	132.4
Ottawa	" ..	48.2	133.1
Clothier	" ..	49.1	134.0
Selbe	" ..	54.3	139.2
Mifflin	" ..	50.2	135.1
Dobra	" ..	50.8	135.7
Sharples	" ..	51.9	136.8
[fol. 1181] Manelo	" ..	53.0	137.0

		St. Albans	South Portsmouth
Ardrossan	W. Va...	55.4	140.3
Blair	" ..	58.3	143.2
Sovereign	" ..	59.3	144.2
West Junction	" ..	48.7	133.6
Total			8,788.0

Via Barboursville

		Barbours- ville	South Portsmouth
Guyan Brick Co.....	W. Va...	1.7	57.4
Martha	" ..	5.4	61.1
Inez	" ..	9.9	65.6
Salt Rock.....	" ..	14.0	69.7
West Hamlin.....	" ..	17.2	72.9
Sheridan	" ..	20.9	76.6
Branchland	" ..	22.4	78.1
Hubball	" ..	24.0	79.7
Six Mile.....	" ..	25.0	80.7
Midkiff	" ..	26.4	82.1
Bradys	" ..	28.4	84.1
Ranger	" ..	31.3	87.0
Lattin	" ..	34.7	90.4
Gill	" ..	36.3	92.0
Sand Creek.....	" ..	40.1	95.8
Atenville	" ..	42.5	98.2
Harts	" ..	44.1	99.8
Ferrellsburg	" ..	45.4	101.1
Fry	" ..	46.7	102.4
Toney	" ..	48.7	104.4
Big Creek.....	" ..	50.2	105.9
Stone Branch.....	" ..	51.4	107.1
Kitchen	" ..	51.8	107.5
Chapmanville	" ..	54.4	110.1
Pecks Mill.....	" ..	58.7	114.4
Henlawson	" ..	62.2	117.9
Peach Creek.....	" ..	63.4	119.1
Logan	" ..	65.3	121.0
Monitor Jet.....	" ..	66.1	121.8
Monitor No. 1.....	" ..	67.0	122.7
Monitor No 2.....	" ..	67.8	123.5

	Barbours- ville	South Portsmouth
Monaville W. Va.	68 8	124 5
Rossmore " ..	69.9	125.6
Switzer " ..	71.6	127.3
Alemma " ..	71.8	127.5
Mico " ..	72.1	127.8
Chauncey " ..	73.2	128.9
Omar " ..	74.0	129.7
Barnabus " ..	74.8	130.5
Stirrat " ..	76.5	132.2
Gay " ..	66.3	122.0
Shamrock " ..	66.7	122.4
Cora " ..	67.5	123.2
Whitman " ..	68.9	124.6
Holden " ..	69.5	125.2
Beebe Place " ..	69.7	125.4
Mines 7 and 8 " ..	70.5	126.2
[fol. 1182] End of Tracks " ..	70.9	126.6
Verdun " ..	67.9	123.6
Marne " ..	68.7	124.4
Argonne " ..	69.7	125.4
Guyan P. M. Co. " ..	66.7	122.4
Stollings " ..	67.0	122.7
McConnell " ..	68.0	123.7
Rum Jet " ..	70.8	126.5
Dabney " ..	71.5	127.2
Dehu " ..	72.3	128.0
McBeth " ..	72.8	128.2
Cham " ..	73.3	129.0
Orville " ..	73.8	129.5
Yolyn " ..	75.5	131.2
Slagle " ..	77.4	133.1
Lyburn " ..	72.0	127.7
Wilber " ..	74.5	130.2
Manbar " ..	75.4	131.1
Earling " ..	75.6	131.3
Taplin " ..	77.2	132.9
Man " ..	78.6	134.3
Kistler " ..	79.5	135.2
Lax " ..	80.9	136.6
Summer Coal Co. " ..	81.2	136.9

		Barbours- ville	South Portsmouth
Accoville	W. Va.	81.9	137.6
Braeholm	"	82.5	138.2
Fanco	"	83.2	138.9
Becco	"	83.5	139.2
Amherstdale	"	83.9	139.6
Robinette	"	84.8	140.5
Latrobe	"	86.4	142.1
Crites	"	87.5	143.2
Stowe	"	88.2	143.9
Lundale	"	88.5	144.2
Craneco	"	89.1	144.8
Lorado	"	90.2	145.9
Three Forks.....	"	93.5	149.2
Pardee	"	91.3	147.0
Foley	"	68.0	123.7
Fort Branch.....	"	68.4	124.1
Wanda	"	70.0	125.7
Rex	"	70.2	125.9
Ethel	"	70.6	126.3
Keyes	"	71.0	126.7
End of Line.....	"	71.2	126.9
Davin	"	79.7	135.4
Mallory	"	81.2	136.9
Huffsville	"	81.7	137.4
Landville	"	81.3	137.0
Christian	"	83.7	139.4
Verner	"	85.0	140.7
Guyco	"	88.9	144.6
Nagol	"	90.5	146.2
Total			12,062.0
Grand total.....			20,941.5
Average distance.....			120.3

[fol. 1183] From Coal-shipping Stations in C. & O. Ry.,
Kentucky Dist. Group No. 4

From (Main Line Stations)

From (main-line stations)		Distance to South Portsmouth
Catlettsburg	Ky. .	36.4
Mitchell	" .	35.5
Chaffee	" .	34.9
Williams	" .	34.8
Normal	" .	34.4
Clyffside	" .	33.8
Hermann	" .	32.5
Norton	" .	32.1
Ashland	" .	31.2
Ashland Jet.....	" .	30.9
Bellefonte	" .	29.3
Russell	" .	36.5
Wurtland	" .	21.7
Kico	" .	21.0
Riverton	" .	18.7
Total		453.7

Via Catlettsburg

	Cat- lettsburg	South Portsmouth
Hampton	Ky... 1.4	37.8
Leach	" .. 3.9	40.3
Savage Branch	" .. 5.3	41.7
Lockwood	" .. 8.0	44.4
Burnaugh	" .. 11.1	47.5
Kavan	" .. 12.0	48.4
Buchanan	" .. 13.5	49.9
Zelda	" .. 16.4	52.8
Fullers	" .. 20.3	56.7
Louisa	" .. 25.3	61.7
Eloise	" .. 26.5	62.9
Walbridge	" .. 27.9	64.3
Torchlight	" .. 30.7	67.1
Holt	" .. 33.1	69.5
Chapman	" .. 33.4	69.8
Callup	" .. 34.3	70.7
Beech Farm	" .. 36.6	73.2
Kise	" .. 38.4	74.8
Lowman	" .. 39.5	75.9
Ben Low	" .. 43.2	79.6
Richardson	" .. 43.3	79.7
Rock Branch	" .. 45.1	81.5
Peach Orchard	" .. 46.2	82.6
Graves Shoals	" .. 45.2	81.6
Chestnut	" .. 48.8	85.2
Hammond	" .. 51.1	87.5
White House	" .. 51.6	88.0
River	" .. 53.6	90.0
Lower Greasy	" .. 54.3	90.7
Offutt	" .. 54.5	90.9
Meeks	" .. 55.0	91.4
Acrogen	" .. 59.2	95.6
Thealka	" .. 59.6	96.0
Total		2,329.7

[fol. 1184]

Via Ashland

		Ashland	South Portsmouth
Strait Creek	Ky ..	22 2	53 4
Mt. Savage	" ..	23 3	54 5
Hitchins	" ..	25 5	56 7
Leon	" ..	28 5	59 7
Aden	" ..	32 8	64 0
Corey	" ..	36 3	67 5
Total			355 8
Grand Total.			3,139 2
Average Distance.			54 1

From Coal-shipping Stations in C. & O. Ry., Big Sandy
Dist., Group No. 5

Via Catlettsburg

From		Cat- lettsburg	South Portsmouth
Paintsville	Ky ..	60 6	97 0
Stafford	" ..	61 7	98 1
Dawkins	" ..	61 9	98 3
Van Lear Jet	" ..	62 4	98 8
Lesley	" ..	64 4	100 8
East Point	" ..	66 5	102 9
Auxier	" ..	68 1	104 5
Mary Luck	" ..	69 0	105 4
Cliff	" ..	73 3	109 7
Prestonburg	" ..	74 4	110 8
Middle Creek	" ..	74 7	111 1
Mason	" ..	75 2	111 6
Colonial	" ..	75 6	112 0
Bull Creek	" ..	78 1	114 5
Alonzo	" ..	80 5	116 9
Emma	" ..	81 4	117 8
Dwale	" ..	83 5	119 9
Beaver Creek Jet	" ..	84 2	120 6
Martin	" ..	89 0	125 4
Dinwood	" ..	90 2	126 6
Arzillia	" ..	90 7	127 1

		Cat- lettsburg	South Portsmouth
Maytown	Ky...	92 7	129 1
Langley	"	94 7	131 1
Osborne	"	95 5	131 9
Northern	"	96 3	132 7
Bosco	"	99 2	135 6
Garrett	"	101 5	137 9
Lackey	"	102 5	138 9
Estill	"	104 1	140 5
Wayland	"	104 2	140 6
Beaver Creek	"	84 4	120 8
Banner	"	86 2	122 6
Ivel	"	88 6	125 0
Betsy Layne	"	92 3	128 7
Harold	"	94 0	130 4
Big Shoals	"	94 5	130 9
Boldman	"	95 5	131 9
Broad Bottom	"	97 0	133 4
Mossy Bottom	"	98 4	134 8
Wagner	"	98 9	153 3
[fol. 1185] Steele	"	99 0	135 4
Cabin Branch	"	99 2	135 4
Keyser	"	99 6	136 0
Coal Run	"	101 0	137 4
Pauley	"	102 8	139 2
Pikeville	"	105 3	141 7
Big Hollow	"	106 4	142 8
Land	"	107 6	144 0
Kewanee	"	110 2	146 6
Fords Branch	"	111 9	148 3
Shelby	"	113 7	150 1
Ward	"	115 9	152 3
Greasy Creek	"	119 4	155 8
The Forks	"	117 1	153 5
Timber	"	117 6	154 0
Daniels	"	119 9	156 3
Morrowbone	"	120 9	157 3
Wolfpit	"	122 1	158 5
Rockhouse	"	125 1	161 5
Lookout	"	126 4	162 8
Henry Clay	"	127 1	163 5

		Cat- letsburg	South Portsmouth
Thornhill	Ky...	127 4	163 8
Big Branch	" ..	127 7	164 1
Coaldale Jet	" ..	128 1	164 5
Coaldale	" ..	129 6	166 0
Hellier	" ..	128 7	165 1
Greenough	" ..	128 9	165 3
Beddow	" ..	129 7	166 1
Allegheny	" ..	130 7	167 1
Lonney	" ..	123 1	159 5
Pond Creek	" ..	124 1	160 5
Belcher	" ..	125 9	162 3
Dunleary	" ..	127 1	163 5
Elkhorn City	" ..	128 6	165 0
Grand Total.....			10,107 3
Average Distance.....			137 9

Distance from Stations on Sandy Valley & Elkhorn Rail-
way

From		Distance to	
		Shelby	South Portsmouth
Yeager	Ky ..	4 1	154 2
Penny	" ..	8 1	158 2
Virgie	" ..	10 8	160 9
Elswick	" ..	13 2	162 3
Shelby Gap	" ..	22 7	172 8
Burdine	" ..	25 4	175 5
Jenkins	" ..	28 1	178 2
Dunham	" ..	29 8	179 9
Total		142 0	1,342 0
Average Distance.....		17 7	167 7

[fol. 1186] Distance from Stations on Long Fork Railway

From		Distance to	
		Martin	South Portsmouth
Hite	Ky..	1 1	126 5
Salisbury	"	3 1	128 5
Gibson	"	8 4	133 8
McDowell	"	10 2	135 6
Borders	"	12 1	137 5
Gearheat	"	13 3	138 9
Clear Creek	"	16 2	141 6
Buckinham	"	18 2	143 6
Wheelwright	"	18 6	144 0
Weeksbury	"	23 2	148 6
East Weeksbury	"	25 1	150 5
Total		149 5	1,528 9

Average Distance 13 6 138 9

Distance from Stations on Carolina, Clinchfield & Ohio
Railway

From		Distance to	
		Elkhorn, City, Ky.	South Portsmouth
Elkhorn City	Ky..	..	165
Falls Branch	Va..	7	172
Spash Dam	Va..	10	175
Haysi	Va..	11	176
Delano	Va..	15	180
Steinman	Va..	15	180
Moss	"	17	182
Trammell	"	32	197
Total		107	1,427
Average Distance		13 6	138 9

[fol. 1187]

EXHIBIT No. 15

Witness Williamson

Statement of Rates on Bituminous Coal from Coal Shipping Stations on Chesapeake & Ohio, Norfolk & Western, and Virginian Railways to Tidewater Points for Transshipment Beyond Virginian Capes

Rates per ton 2,240 pounds from

To	C. & O. Ry., New River district	N. & W. Ry., Pocahontas, Tug River, and Clinch Valley Nos. 1 and 2 districts	Virginian Ry., New River district
Newport News, Va....	\$2.52	.....	.....
Norfolk (Lambert's Point), Va.		\$2.52	.....
Sewall's Point, Va. ....		.....	\$2.52

Tariff Authorities:

C. & O. Ry. I. C. C. No. 9311.

N. & W. Ry. I. C. C. No. 2963-B.

Virginian Ry. I. C. C. No. 1541.

[fol. 1188]

EXHIBIT No. 16

Witness Williamson

Statement of Rates on Bituminous Coal from Coal Shipping Stations on Chesapeake & Ohio, Norfolk & Western, and Virginian Railways to Representative Destinations in Southeast

Rates per ton 2,000 pounds from

To	C. & O. Ry., New River district	N. & W. Ry., Pocahontas, Tug River, and Clinch Valley Nos. 1 and 2 districts	Virginian Ry., New River district
Jacksonville, Fla.	\$3.63	\$3.63	\$3.63
Atlanta, Ga.	3.71	3.71	3.71
Savannah, Ga.	3.29	3.29	3.29
Waycross, Ga.	3.74	3.74	3.74
Raleigh, N. C.	3.20	3.20	3.20
Charlotte, N. C.	3.22	3.22	3.22
Columbia, S. C.	3.38	3.38	3.38
Greenville, S. C.	3.38	3.38	3.38

Tariff Authorities:

C. & O. Ry. I. C. C. No. 8677, Supp. 5.

N. & W. Ry. I. C. C. No. 2901-B.

Virginian Ry. I. C. C. No. 1480.

Comparison of Rates on Classes and Various Commodities From Hot Coal, W. Va., Virginian Railway, and Hot Coal, W.

Rates in cents per hundred pounds from Hot C

From Hot Coal, W. Va., to	Classes												Lumber		V
	1		2		3		4		5		6				
	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	
Chicago, Ill.	1 48	1 48	1 29	1 29	1 02	1 02	72½	72½	63	63	52	52	36	35½	
Cleveland, O.	1 28½	1 28½	1 11½	1 11½	84½	84½	60½	60½	52	52	43	43	31	30½	
Detroit, Mich.	1 28½	1 28½	1 11½	1 11½	85	85	61	61	52½	52½	43½	43½	31	30½	
Buffalo, N. Y.	1 28½	1 28½	1 11½	1 11½	84½	84½	60½	60½	52	52	43	43	36½	36	
Pittsburgh, Pa.	1 28½	1 28½	1 11½	1 11½	84½	84½	60½	60½	52	52	43	43	31½	31½	
Indianapolis, Ind.	1 38	1 38	1 20½	1 20½	95½	95½	68	68	59	59	48½	48½	32	31½	

Tariff Authorities:

A. P. Gilbert's I. C. C. Nos. 94, 107 and 112.
 Virginian I. C. C. No. 1500 and 1531.
 C. & O. Ry. I. C. C. No. 9171.

EXHIBIT No. 18

Witness Williamson

Railway, and Hot Coal, W. Va., Chesapeake & Ohio Railway, to Representative Destinations in C. F. A. Territory

hundred pounds from Hot Coal, W. Va.

Lumber		Asphaltum		Bleach		Brick		Clay		Gravel		Crude limestone		Stone : curbing & flagging		Talc	
Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.	Vgn.	C. & O.
36	35½	41	41	48	48	44½	44½	44½	44½	37	37	37	37	43	43	44½	44½
31	30½	34½	34½	39	39	37	37	38	38	30½	30½	30½	30½	35	35	38	38
31	30½	34½	34½	39	39	37	37	38	38	30½	30½	30½	30½	35	35	38	38
36½	36	34½	34½	39	39	37	37	38	38	30½	30½	30½	30½	35	35	38	38
31½	31½	34½	34½	39	39	37	37	38	38	30½	30½	30½	30½	35	35	38	38
32	31½	38½	38½	45½	45½	42	42	42	42	35	35	35	35	40	40	42	42

[fol. 1189]

EXHIBIT No. 17

Witness Williamson

Statement Showing Comparison of Rates on Bituminous Coal from Complainant's Mine at Hot Coal, W. Va., on Virginian Railroad, with Rates from Chesapeake & Ohio Railway, New River District, to Representative Destinations in Central Freight Association Territory

To	Rate per net ton from	
	Hot Coal W. Va. (Vir- ginian Ry.)	C. & O. Ry., New River district
Columbus, O.	\$4.41	\$2.09
Cleveland, O.	4.91	2.59
Indianapolis, Ind.	5.04	2.62
Detroit, Mich.	5.10	2.78
Chicago, Ill.	5.61	3.24
Buffalo, N. Y.	5.80	3.48

Tariff Authorities:

C. & O. tariff I. C. C. No. 8665, Supp. No. 21.

Virginian tariff I. C. C. No. 1542.

(Here follows Exhibit No. 18, witness Williamson, side folio page 1190)

[fol. 1191]

EXHIBIT IN EVIDENCE

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. —

WYOMING COAL COMPANY et al., Complainants,

vs.

THE VIRGINIAN RAILWAY COMPANY et al., Defendants

Complaint

Francis B. James, Commerce Counsel; E. E. Williamson, Rate and Transportation Specialist; Ewing H. Scott,

Commerce Counsel, 803-808 Westory Building, Washington, D. C., on behalf of complainants.

Washington, D. C., November 9, 1922.

[fol. 1192] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. —

WYOMING COAL COMPANY, WILTON SMOKELESS COAL COMPANY, TRACE FORK COAL COMPANY, DEVIL'S FORK COAL COMPANY, MILLER-POCAHONTAS COAL COMPANY, and LECKIE FIRE CREEK SMOKELESS COAL COMPANY, Complainants,

vs.

THE VIRGINIAN RAILWAY COMPANY et al., Defendants

Complaint

Complaint of the above named complainants shows:

I

That complainant, Wyoming Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mine is located at Wyco, Wyoming County, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Tams, West Virginia.

II

That complainant, Wilton Smokeless Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal";

that its mines are located at or near Jonben, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Beckley, West Virginia.

III

That complainant, Trace Fork Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mines are located at or near Tracoal, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Tracoal, West Virginia.

[fol. 1194]

IV

That complainant, Devil's Fork Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mines are located at or near Devil's Fork, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Devil's Fork, West Virginia.

V

That complainant, Miller-Pocahontas Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mines are located at or near Corinne, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Corinne, West Virginia.

VI

That Complainant, Leckie Fire Creek Smokeless Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mine is located at or near Fireco, [fol. 1195] West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Welch, West Virginia.

VII

That defendants, carriers named in Appendix "A" hereto attached and by reference made a part hereof, are common carriers engaged in the transportation of property, including coal, wholly by railroad and partly by railroad and partly by water between points in the State of West Virginia and points in the States of Kentucky, Virginia, Ohio, Indiana, Illinois, Michigan, Pennsylvania, New York, District of Columbia, and other States of the United States and the Dominion of Canada, and as such common carriers are subject to the provisions of the Interstate Commerce Act, and all acts amendatory thereof and supplementary thereto including the Transportation Act of 1920.

VIII

That there is a large territory in the United States commonly known as the "New River District," "Pocahontas District," "Tug River District," and "Winding Gulf District," wherein there are large deposits of bituminous coal known as semi-bituminous coal and popularly referred to as "smokeless coal," and that there are numerous mines, large and small, throughout said territory wherein is mined and produced said semi-bituminous coal, and the operators of said mines produce and mine said coal and sell said coal and ship and transport said coal in interstate and foreign commerce; that said semi-bituminous coal is used for domestic coal, for the production of steam and for the produc- [fol. 1196] tion of light, heat and power, and as railroad

fuel and as bunker coal, and is used in supplying fuel for ships forming part and parcel of the United States Navy and the Merchant Marine, and in ships in the coastwise trade, in the foreign trade, and the inland waterways and on the Lakes, and is used for by-product purposes; that the producers of said coal, including the complainants, are in active and sharp competition; that the fostering, promotion and stimulation of the production and distribution of said semi-bituminous coal is necessary and desirable in the public interest; that all of said semi-bituminous coal is in sharp competition; that it is necessary and desirable in the public interest and it is just and reasonable that all of said coal should be maintained on a competitive basis, and that rates from all of said territory producing said semi-bituminous coal should be upon a parity to common destinations in interstate commerce, and that the carriers serving said territory have as a rule maintained common rates known as "district rates," from all said points of production to common points of destination in interstate commerce; that it is desirable in the public interest that consumers of said coal may resort to many markets and bring said markets into competition.

IX

That the mines and lands of complainants are geographically, geologically and commercially and from a transportation point of view, within the territory described in paragraph VIII wherein a common group rate is generally applicable throughout said territory from mines on main lines and branches.

[fol. 1197]

X

That defendant, Chesapeake & Ohio Railway Company, issues and publishes and files with the Interstate Commerce Commission numerous tariffs naming joint through rates on the group basis from coal operations located on its main line and branch lines in the New River District, to various points of destination, a list of which tariffs is set forth in Appendix "B" of this complaint, which tariffs set forth in said Appendix "B" are by reference made part and parcel of this complaint.

XI

That defendants have failed, neglected or refused to establish and put in force joint through rates on coal from complainants mines on the Virginian Railway to interstate destinations named in the tariffs set forth in said Appendix "B" to this complaint; that the rates now maintained from complainants' coal operations to points of destination enumerated in said tariffs set forth in said Exhibit "B," are made up of the combination of local rates published by the Virginian Railway plus rates published by the Chesapeake & Ohio Railway; that said combination rates are so excessive as to render it utterly impossible for complainants to dispose of the products of their mines at points of destination enumerated in said tariffs set forth in said Appendix "B" in competition with other coal producing companies in the New River District served by the Chesapeake & Ohio Railway and enjoying so-called New River District rates.

[fol. 1198]

XII

That defendant, The Virginian Railway Company, has by certain trackage contracts and operating agreements entered into with defendant, Chesapeake & Ohio Railway Company, secured to numerous coal operations in New River District located on lines owned and operated by said defendant, The Virginian Railway Company, the New River District group basis of rates on coal traffic both eastbound and westbound via the Chesapeake & Ohio Railway and its connections; that the coal shipping stations at which said coal operations are located are named in the tariffs of the Chesapeake & Ohio Railway as Chesapeake & Ohio Railway stations, and said company publishes and applies the New River District group rates from said operations the same as from operations in the New River District located locally on its own lines; that said operations by reason of the joint service accorded under the terms of said trackage contracts and operating agreements are unduly and unjustly preferred to the undue, unjust and unreasonable prejudice and disadvantage of complainant's mines; that by reason of said trackage contracts and operating agreements

competitors of complainants in the New River District are given the benefit of the service and the rates of both lines while the service and the rates of both lines are denied to complainants; that defendants by giving to competitors of complainants in the New River District the benefit of the service and the rates on both lines under the terms of said [fol. 1199] trackage contracts and operating agreements while denying to complainants the benefit of the service and the rates of both lines give to said competitors of complainants an undue preference and advantage and subject complainants to undue prejudice and disadvantage.

XIII

That the defendant, Chesapeake & Ohio Railway Company, by tariffs duly filed with the Commission, publishes and applies New River District group rates on bituminous coal from St. Paul, Virginia, and other originating stations served by the Carolina, Clinchfield & Ohio Railroad, to points of destination throughout Central Freight Association territory (Chesapeake & Ohio Tariff I. C. C. No. 8665); that coal operations located at or near St. Paul, Virginia, and other originating stations on the Carolina, Clinchfield & Ohio Railroad from which joint through rates on coal are named by the Chesapeake & Ohio Railway Company on the New River District basis to destination generally throughout Central Freight Association territory are by reason of the facts alleged accorded an undue and unreasonable preference and advantage to the undue, unjust and unreasonable prejudice and disadvantage of complainants' mines.

XIV

That there is a present and constantly increasing demand for coal produced at complainants' mines at points of destination enumerated in said tariffs set forth in said [fol. 1200] Appendix "B" and it is therefore necessary and desirable in the public interest that defendant carriers should issue, publish and file with the Interstate Commerce Commission joint through rates from the coal operations of complainants located on the line of railroad of defendant, The Virginian Railway Company, to said desti-

nations on the same basis as the rates applying from mines of complainants' competitors located on the Chesapeake & Ohio Railway in the New River District.

XV

That by reason of the facts aforesaid complainants have been subjected to rates for transportation which were and are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and unduly prejudicial in violation of Section 3 thereof.

Wherefore, complainants pray that defendant carriers may be required to answer the charges herein; that after due hearing and investigation an order may be made commanding defendant carriers, and each of them, to cease and desist from the aforesaid violations of said Interstate Commerce Act and all acts amendatory thereof and supplemental thereto, particularly the Transportation Act of 1920, and establish and put in force and apply in the future to the transportation of coal from complainants' mines to destinations enumerated in the tariffs set forth in Appendix "B" hereof, joint through rates on the New River District basis in lieu of the present unjust, unreasonable, unduly prejudicial and discriminatory rates, and that such [fol. 1201] further order or orders be made as the Commission may consider proper in the premises.

Respectfully submitted, Wyoming Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Wilton Smokeless Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Trace Fork Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Devil's Fork Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Miller-Pocahontas Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Leekie Fire Creek Smokeless Coal Company, by Francis B. James, Its Attorney in Fact and Counsel.

Washington, D. C., November 9, 1922.

[fol. 1202]

Appendix "A"

Defendant Carriers by Reference Made Parties Defendant
to This Complaint

The Virginian Railway Company,
 The Chesapeake & Ohio Railway Company,
 The Chesapeake & Ohio Railway Company of Indiana,
 Chesapeake Steamship Company,
 Chesapeake Western Railway,
 Ann Arbor Railroad Company,
 The Atchison, Topeka & Santa Fe Railway Company,
 Baltimore & Ohio Chicago Terminal Railroad Company,
 The Baltimore & Ohio Railroad Company,
 Boyne City, Gaylor & Alpena Railroad Company,
 Carolina, Clinchfield & Ohio Railway,
 Central Indiana Railway Company,
 The Chesapeake and Ohio Northern Railway Company,
 The Chicago & Alton Railroad Company,
 Chicago, Burlington & Quincy Railroad Company,
 Chicago & Eastern Illinois Railroad Company, and William
 J. Jackson, Receiver,
 Chicago & Erie Railroad Company,
 Chicago Great Western Railroad Company,
 The Chicago, Indianapolis & Louisville Railway Company,
 Chicago, Kalamazoo & Saginaw Railway Company,
 Chicago, Milwaukee & Gary Railway Company,
 Chicago, Milwaukee & St. Paul Railroad,
 Chicago & Northwestern Railway Company,
 Chicago, Peoria & St. Louis Railroad Company, and Blu-
 ford Wilson and Wm. Cotter, Receivers,
 The Chicago, Rock Island & Pacific Railway Company,
 [fol. 1203] Cincinnati, Georgetown & Portsmouth Railroad,
 The Cincinnati, Indianapolis & Western Railroad Company,
 The Cincinnati, Lebanon & Northern Railway Company,
 The Cleveland, Cincinnati, Chicago & St. Louis Railway
 Company,
 The Dayton & Union Railroad Company,
 The Dayton, Toledo and Chicago Railway Company,
 The Detroit & Huron Railway Company,
 Detroit & Mackinac Railway Company,
 Detroit, Toledo & Ironton Railroad Company,

Detroit and Toledo Shore Line Railroad Company,
 The East Jordan and Southern Railway Company,
 Elgin, Joliet & Eastern Railway Company,
 Erie Railroad Company,
 Erie & Michigan Railway and Navigation Company,
 Felicity & Bethel Railroad Company,
 Fort Wayne, Cincinnati & Louisville Railroad Company,
 Grand Rapids & Indiana Railway Company,
 Grand Trunk Western Railway Company,
 The Home Avenue Railroad Company,
 The Hocking Valley Railway Company,
 Illinois Central Railroad Company,
 Illinois Terminal Railroad Company,
 Indiana Harbor Belt Railroad Company,
 Kalamazoo, Lake Shore & Chicago Railway Company,
 The Kanawha & Michigan Railway Company,
 Kentucky & Indiana Terminal Railroad Company,
 The Lake Erie & Western Railroad Company,
 The Lorain, Ashland & Southern Railroad Company,
 The Lorain & West Virginia Railway Company,
 Louisville, Henderson & St. Louis Railway Company,
 [fol. 1204] Louisville & Nashville Railroad Company,
 Manistee & Northeastern Railroad, and The Michigan
 Trust Company, Receiver,
 Michigan Railroad Company,
 The Michigan Central Railroad Company,
 The Minneapolis & St. Louis Railroad Company,
 New Jersey, Indiana & Illinois Railroad,
 The New York Central Railroad Company,
 The New York, Chicago & St. Louis Railroad Company,
 Norfolk & Western Railway Company,
 The Northern Ohio Railway Company,
 The Ohio Electric Railway Company, and B. J. Jones, Re-
 ceiver,
 The Pennsylvania Railroad Company, Western Lines,
 The Pennsylvania Railroad Company,
 Peoria & Pekin Union Railway Company,
 Pere Marquette Railway Company,
 The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad
 Company,
 The Pittsburgh & Lake Erie Railroad Company,
 Pontiac, Oxford & Northern Railroad Company,

Rapid City, Black Hills and Western Railroad Company,
 The Rapid Railway Company,
 Rapid Railroad Company,
 St. Louis and Hannibal Railroad Company,
 St. Louis Merchants Bridge Terminal Railway Company,
 St. Louis Transfer Railway Company,
 Southern Railway Company,
 Terminal Railroad Association of St. Louis,
 The Toledo & Ohio Central Railway Company,
 [fol. 1205] Toledo, Peoria & Western Railway Company,
 and S. M. Russell, Receiver,
 Toledo, St. Louis & Western Railroad Company, and W. L.
 Ross, Receiver,
 The Toledo & Western Railroad Company,
 Wabash Railway Company,
 The Wabash, Chester & Western Railroad Company,
 The Wheeling & Lake Erie Railway Company,
 Wiggins Ferry Company,
 The Zanesville & Western Railway Company.

Appendix "B"

Tariffs by Reference Made Part and Parcel of this Complaint

Chesapeake & Ohio Railway Freight Tariff I. C. C. No. 8665 and Supplements Nos. 14, 21 and 25 thereto.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No. 9368.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No. 9363.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No. 9206 and Supplement No. 1 thereto.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No. 9366.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No. 9369.

[fol. 1206] INTERSTATE COMMERCE COMMISSION

Docket No. 13832

EXHIBIT No. 20

Witness Scott

[fol. 1207] The Application of the Virginian Railway Company to the United States Railroad Administration for Just Compensation for the Use of Its Railroad During Federal Control

Applicant, the Virginian Railway Company, a corporation of Virginia, respectfully represents that, pursuant to the Act of Congress of March 21, 1918, the Interstate Commerce Commission has certified the amount of the average annual railway operating income of Applicant for the three years ended June 30, 1917, as \$3,247,603.41. And Applicant further represents that during all of said period of three years ended June 30, 1917, its condition was so exceptional as to make its average annual railway operating income for said period plainly inequitable as a fair measure of just compensation to it for the use of its railroad under Federal control, because:

(a) During nearly all the year ended June 30, 1915, and the early part of the following year, it was subject to abnormal conditions peculiarly and unfavorably affecting its traffic and causing a considerable shortage in both gross and net income as compared with what would have been the results under normal conditions.

(b) Applicant had made considerable expenditures for additions, improvements and equipment, prior to January 1, 1918, some of which were not at all reflected in the railway operating income for the said three year period, and others were not fully reflected in the railway operating income of said period or any substantial part thereof.

(c) During the whole of said three year period, Applicant's traffic was in such an undeveloped condition that in no one of said years did its railway operating income reflect the fair value of its property or constitute a fair measure of just compensation for the use of its property for any subsequent period.

And Applicant respectfully asks that the sum to be paid it annually as just compensation for the use of its property, pursuant to the Act of Congress of March 21, 1918, and to be inserted in the contract which it proposes to make with the Director General of Railroads, pursuant to the provisions of said Act, be not limited to its average annual railway operating income for the said three year period, but may be such sum as under the circumstances of Applicant's particular case shall be deemed just, which Applicant respectfully avers should not be less than \$5,200,000.

In support of this application, the following facts are respectfully presented.

[fol. 1208]

I

The Property of the Virginian Railway Company

On January 1, 1918, the date as of which for the purposes of the proposed contract Applicant's property is to be regarded as taken over, its property consisted of the following:

1. Its railway, which consisted, as shown by the statement of "Mileage in Operation" of its Eighth Annual Report for the (calendar and fiscal) year 1917, of the following:

Lines Owned:

	Miles
Sewalls Point, Va., to Deepwater, W. Va. (5.05 miles double track)	440.69
Connection near Tidewater Junction, Va.	0.17

Shockley Branch:

Glen White Junction, W. Va., to (No name)	1.62
West Wye at Glen White Junction, W. Va.	0.33

Winding Gulf Branch:

Mullens, W. Va., to Pemberton, W. Va.	23.71
East Wye at Mullens, W. Va.	0.34

Upper Winding Gulf Branch:

Loop Junction, W. Va., to Winding Gulf, W. Va.	2.17
--	------

Allen Creek Branch:

	Miles
Allen, W. Va., to Wyco, W. Va.	1.12

Stone Coal Branch:

Amigo, W. Va., to Lego, W. Va.	7.51
--	------

Devils Fork Branch:

Junction with Stone Coal Branch to Amigo Mine, W. Va.	1.09
--	------

White Oak Railway Branch:

Oakwood and Carlisle, W. Va., to Lochgelly, W. Va.	6.87
Duncan's Crossing, W. Va., to near Bishop, W. Va.	1.14
—	8.01

486.76

Lines Leased:

The Virginian Terminal Railway Company:

Center of Boush Creek, Va., to end of Coal Pier	1.75
--	------

Tracks of Other Companies Used
Jointly Under Trackage Rights:

White Oak Railway Company:

Price Hill Junction, W. Va., to Price Hill, W. Va.	2.33
---	------

Piney River & Paint Creek Railroad:

Beckley Junction, W. Va., to Pros- perity, W. Va.	6.69
--	------

Norfolk Southern Railroad:

Norfolk, Va., to connection near Tide- water Junction, Va. (1.38 miles double track)	1.74
--	------

E. E. White Coal Company:

End of Shockley Branch to Glen White, W. Va.	1.46
---	------

Norfolk Terminal Railway Company:

	Miles
Norfolk, Va. (0.35 miles double track)	0.36

The Chesapeake & Ohio Railway Company:

Pemberton, W. Va., to Westwood, W. Va., and Pemberton, W. Va., to Woodpeck, W. Va.	11.53	
	<hr/>	24.11

Total mileage operated 512.62

First Track, operated	488.51
First Track, used jointly	24.11
Second Track, operated	5.05
Second Track, used jointly	1.73
Sidings and Yards	251.17

Total, all tracks 770.57

[fol. 1209] Mileage operated (By States):

Virginia	333.50
West Virginia	179.12
	<hr/>
	512.62

In addition, on January 1, 1918, there were placed in operation newly completed tracks, all owned by Applicant, and all in West Virginia, as follows:

Upper portion Stone Coal Branch	1.54
Piney Creek Extension of Winding Gulf Branch ..	7.25

Total 8.79

So that the property as taken over by the Railroad Administration had mileage as follows:

	Miles
Lines owned	495.55
Lines leased	1.75
Tracks of other companies used under trackage rights	24.11
	<hr/>
Total mileage operated	521.41
Total track mileage	779.36

	Miles
Mileage operated, Virginia	333.50
Mileage operated, West Virginia	187.91
Total	<u>521.41</u>

And when the railway was taken over, there were under construction.

New double track, Clarks Gap Hill, M. P. 371.5 to M. P. 366.4	5.1
Branch Main Line, Guyandotte River	2.4
Branch Main Line, Beards Fork	2.5

Note that the Piney Creek Extension, while not formally in operation until January 1, 1918, handled in the year 1917 coal to the amount of 288,263 tons, and that a substantial amount of business was being done on the 2.4 miles of Guyandotte River Branch Line, the coal therefrom during the last six months of 1917 amounting to 53,634 tons, though on January 1, 1918, it was still under construction and not formally placed in operation.

2. The equipment of the railway in service on January 1, 1918, which consisted of the following:

10 passenger locomotives with an aggregate tractive power of	252,000 lbs.
99 freight locomotives, including 25 Mallets, with an aggregate tractive power of	6,135,700 lbs.
46 passenger, baggage, mail and express cars.	
1,581 box, stock and flat cars with an aggregate capacity of	63,240 tons
6,994 coal cars, of 100,000 lbs. capacity and over, with an aggregate capacity of	358,285 tons
152 cars, pile drivers, cranes, cabooses, etc., for Company service	
4 barges.	

Of the coal cars mentioned, 665 of 110,000 pounds capacity each were delivered and placed in service between November 1, 1917, and January 1, 1918, and were part of a purchase of 1,000 such cars. These cars under the con-

tract for their construction were delivered at the works of the builder, and were, or most of them were, loaded on other lines as soon as delivered. But through an error only the 456 cars which had reached Applicant's rails on December 31, 1917, were listed in Applicant's Annual Report for 1917, the 209 cars of this purchase which had been shipped from the works but had not yet reached Applicant's rails on December 31, 1917, being omitted. The remaining 335 were delivered early in 1918.

In addition Applicant had in December, 1916, contracted for 10 large Mallet locomotives of 800,000 pounds weight and 147,200 pounds tractive effort each, to be delivered in October, 1917. These were held back by the Government's order for priority to be given engines for France and Russia, and were not delivered until 1918.

3. Materials and Supplies of the aggregate value of about \$1,500,000.00, probably somewhat more, were taken over, but while an inventory thereof is in progress, we understand it has not been completed, and the value, therefore, cannot be exactly stated.

4. Cash on Hand and in Bank, accounts receivable, agents' and conductors' balances, etc., taken over by the Government on January 1, 1918, amounted to the sum of \$3,458,513.21.

With this application, but under separate cover, is submitted a map and profile of the Virginian Railway, corrected to January 1, 1918, showing connections, grades, stations, coal and water stations and other details. And facing this page is a map, also corrected to January 1, 1918, showing the main and branch lines and connections in the coal fields, all mines from which the Virginian Railway was getting coal tonnage and mines under development on said date, distinguishing between mines served or to be served exclusively by the Virginian Railway and joint mines.

II

A Brief History

The construction of the main line of Applicant's railway was begun in 1903 in West Virginia, some three or four miles of road built several years previously being a nucleus;

construction on the Virginia end of the line was begun in 1904; track laying was completed so as to make a continuous line of main track from Deepwater, West Virginia, to Sewalls Point, near Norfolk, Virginia, early in 1909, and the road was formally regarded as placed in operation July 1, 1909.

The branch lines in operation January 1, 1918, (mileage stated on pages 2 and 3), all of which were built or acquired primarily for coal tonnage, though considerable other freight and passenger business is incident thereto, were respectively begun and placed in operation as follows:

Branch line	Begun	In operation
Shockley	June, 1908	July 1, 1910
Winding Gulf	October, 1908	July 1, 1911
Upper Winding Gulf ..	November, 1908	July 1, 1911
Allen Creek	July, 1914	January 1, 1915
Stone Coal	July, 1915; 5 miles ..	July 1, 1916
.....	2.51 " ..	January 1, 1917
.....	1.54 " ..	January 1, 1918
Devils Fork	April, 1915	January 1, 1916
Piney Creek Extension	February, 1916 ...	January, 1918

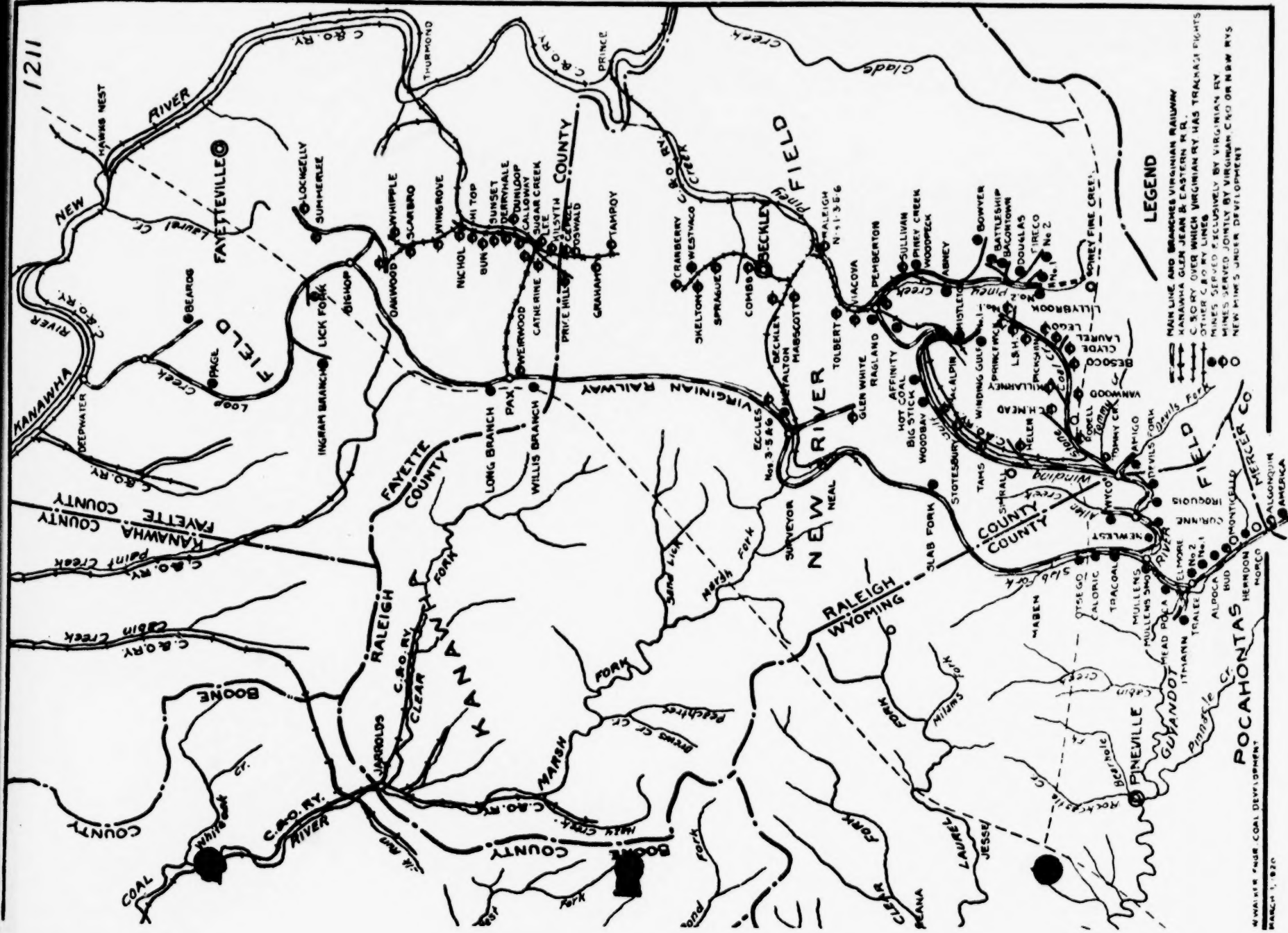
The White Oak Railway Branch was acquired by purchase December 31, 1917, but had been in operation by Applicant under a lease for about five years prior thereto.

On January 1, 1918, Applicant's investment in road and equipment as shown by its records was \$89,965,411.18 net after deducting depreciation on equipment.

(Here follows map, side folio page 1211)

[fol. 1212] When the construction of Applicant railway was begun, its route in West Virginia was through a territory tremendously rich in natural resources of coal and timber, but theretofore entirely undeveloped. In Virginia, the line also ran through a comparatively undeveloped country of very considerable natural resources in lumber, iron, limestone and agricultural products.

The almost complete absence of prior development in the territory traversed by the Railway has made Applicant's business a matter of gradual development, and in the opinion of its officers, it is justified in maintaining that



its traffic during the period of three years ended June 30, 1917, was in such an undeveloped condition as to support a claim on that account for a larger sum than its average annual railway operating income for said three years as just compensation for the use of its property during Federal control.

Roughly speaking, about 90% of the tonnage of Applicant consists of, and about 80% of its total gross income comes from, bituminous coal; the next largest contributor to tonnage and freight revenue is lumber.

In addition to the coal mines open on the main line and branches of Applicant's railway, it was deriving a portion of its coal tonnage on January 1, 1918, from mines situated on tracks belonging to the Chesapeake & Ohio Railway under a trackage arrangement in effect for about five years previously, in which The Chesapeake & Ohio Railway Company was also given trackage rights to reach certain mines on Applicant's railway. Since 1911 Applicant has also been in receipt of a substantial coal tonnage from the Kanawha, Glen Jean & Eastern Railroad, a short line connecting with Applicant's railway at Pax, West Virginia; freight earnings on coal originating on this short line are divided 90% to Applicant and 10% to the short line.

The following statement shows the number of mines from which Applicant derived coal tonnage in each year ended June 30th from 1910 to 1917, both inclusive, and the number of mines from which Applicant was deriving coal tonnage on January 1, 1918, grouped according to whether they were on the lines of Applicant, the connecting short line above mentioned, or lines of other companies over which Applicant had trackage rights.

For the fiscal year ended	On Virgin- ian Ry.	On K. G. J. & E. R. R.	Other lines	Total
June 30, 1910	14			14
June 30, 1911	14	5	5	24
June 30, 1912	15	9	5	29
June 30, 1913	17	10	16	43
June 30, 1914	17	9	16	42
June 30, 1915	22	9	17	48
June 30, 1916	30	9	16	55
June 30, 1917	49	13	18	80
January 1, 1918	59	12	16	87

During the latter part of 1917, two mines on the Kanawha, Glen Jean & Eastern Railroad were consolidated, reducing the number shown on that line by one, and three mines were transferred from the list on other lines to the list of Virginian mines by the purchase of part of the White Oak Railway.

In addition, on January 1, 1918, there were under construction 8 additional mines on the main line or branches of Applicant's railway, all of which began shipments during 1918.

[fol. 1213] The coal tonnage in net tons of 2,000 lbs. handled by Applicant for each of the years ended June 30th from 1910 to 1917, both inclusive, and for the calendar year 1917, was as follows (Company coal included in Inland coal):

For the year ended	Tidewater	Inland	Total
June 30, 1910			916,791
June 30, 1911	1,858,345	458,909	2,317,254
June 30, 1912	2,593,920	759,897	3,353,817
June 30, 1913	3,223,078	810,558	4,033,636
June 30, 1914	3,668,968	713,479	4,382,447
June 30, 1915	3,205,534	620,691	3,826,225
June 30, 1916	4,167,757	826,908	4,994,665
June 30, 1917	4,990,695	1,547,095	6,537,790
Calendar year ended December 31, 1917	5,047,217	1,692,173	6,739,390

All of the mines on the lines built by Applicant are new mines. And with perhaps a very few exceptions, none of the mines on other lines from which it derives coal tonnage are old mines, and each of them, as is the case of all mines on lines built by Applicant, is capable of shipping a great deal more coal than it has shipped, and it may be conservatively stated that the aggregate capacity of the mines from which Applicant derives its coal tonnage is twice as great as the largest tonnage handled in any year.

Reference has been made above to the richness of the territory through which Applicant's railway passes. It is estimated that nearly 10,000,000,000 tons of the best bituminous coals, principally the low volatile or so-called "smokeless" New River and Pocahontas coals, but partially

the high volatile by-product gas and splint coals, are contained in the territory tributary to this railway.

Along with the coal development has gone a constantly increasing development of other industries so that industries in operation listed on the line as of January 1, 1918, were as follows:

Coal operations	87
Lumber manufacturers	27
Other woodworking	49
Foundries, machine manufacturers, building works, etc.	7
Quarries, rock crushers, lime kilns	4
Brick yards and building materials	3
Canning factories	12
Miscellaneous industries	159
Flour mills	7
Total	355

In addition to the products of the mines and other industries, Applicant has had a substantial and constantly increasing business in merchandise freights to and from points on its own line, and, notwithstanding its newness and other obvious disadvantages, had built up a substantial and increasing business in through freight.

And during 1917, there were established near Sewalls Point by the Government a Naval Base and an Army Base, each of which can be reached by rail only over Applicant's tracks; each has been and is expected to continue a very large shipper and receiver of freight.

Also Applicant during 1917 entered into a contract with the Navy Department to construct on its terminal property at Sewalls Point a yard for the storage of coal for the Navy. While this contract was made at the urgent request of the Department, and Applicant did not seek to derive a direct profit from the contract, it will inevitably result in increased coal shipments from the mines on the Virginian Railway and increased business for Applicant.

The following statement shows Applicant's gross income from coal and coke, other freight, passenger and excess baggage and other sources, with operating expenses,

operating ratios, net revenues and percentages of increase and decrease for the years ended June 30, 1910, to 1917, inclusive, and also for the calendar year 1917.

(Here follows comparative statement of earnings and expenses, side folio page 1214.)

[fol. 1215]

III

Abnormal Conditions Peculiarly Affecting the Virginian Railway During the Latter Part of the Calendar Year, 1914, and the Greater Part of 1915

During the latter part of the year 1914 and practically all the year 1915, the earnings of Applicant were greatly reduced by conditions created by the war entirely beyond its control or that of the shippers from whom its revenues are derived, and constituting a case of hardship peculiar to this carrier not suffered by any other. The facts are as follows:

Nearly 90% of Applicant's tonnage is bituminous coal originating on its own lines and the connections mentioned. Of this, nearly 80% is so-called "Tidewater Coal," that is, coal dumped into vessels over Applicant's pier at Sewalls Point, Virginia, for further transport by water, coastwise or export.

The only lines with which the Virginian Railway connects, affording a possible outlet to the West and Northwest, are the Norfolk & Western and Chesapeake & Ohio, themselves originators and carriers of large tonnages of bituminous coal. Applicant has no arrangements for through routes and joint rates with these lines on coal, and the Interstate Commerce Commission in the case of the Loup Creek Colliery Company vs. The Virginian Railway Company, et al., 12 Int. Com. Rep. 471, held that the Chesapeake & Ohio Railway should not be compelled to enter into such arrangements.

The market for coal on Applicant's own rails during the period mentioned was comparatively small, and aside from its tidewater coal and the small market on its own rails, the

Comparative Statement of Earnings and Expenses

Italics indicate decrease

For fiscal year	Coal and coke freight	Other freight	Passenger and excess baggage	Mail and express	Miscellaneous
Ended June 30, 1910.....	\$1,152,046 30	\$587,142 06	\$210,248 78	\$50,085 08	\$63,668 26
Ended June 30, 1911.....	2,590,672 62	716,344 16	257,833 27	60,142 91	46,231 10
Percent of Increase.....	124 88%	22 01%	22 63%	20 08%	27 39%
Ended June 30, 1912.....	3,694,610 79	741,791 10	263,978 45	63,207 70	74,010 22
Percent of Increase.....	42 61%	3 55%	2 38%	5 10%	60 09%
Ended June 30, 1913.....	4,511,474 97	839,373 53	339,942 65	66,374 40	85,418 18
Percent of Increase.....	22 11%	13 15%	28 78%	5 01%	15 41%
Ended June 30, 1914.....	4,957,929 67	832,715 73	387,992 51	77,106 00	84,335 54
Percent of Increase.....	9 90%	0 79%	14 13%	16 17%	1 27%
Ended June 30, 1915.....	4,360,260 99	710,229 85	403,448 42	72,254 97	274,211 53*
Percent of Increase.....	12 05%	14 71%	3 98%	6 29%	225 14%
Ended June 30, 1916.....	5,715,253 57	782,740 47	455,954 63	72,559 83	363,873 08
Percent of Increase.....	31 08%	10 21%	13 01%	0 42%	32 70%
Ended June 30, 1917.....	7,540,417 37	923,491 07	503,296 24	76,078 12	456,875 15
Percent of Increase.....	31 93%	17 98%	10 38%	4 85%	25 56%
Calendar Year ended December 31, 1917.....	8,057,718 09	1,006,784 93	585,091 33	78,100 22	514,778 00
Calendar Year 1916†.....	6,633,223 85	836,397 88	495,050 00	78,949 16	412,343 38
Percent of Increase calendar year 1917 over 1916.....	21 48%	20 37%	18 19%	1 09%	24 84%

*The large increase in Miscellaneous Operating Revenue beginning with the year 1915 as compared with previous years was due to a change in Interstate Commerce "Outside Operations" were transferred, the revenue thereof to Miscellaneous Operating Revenue, and the expense thereof to Operating Expenses. With the Virginia expenses of trimming tidewater coal, \$166,605.30 being the amount of this revenue (gross) in the fiscal year 1915, practically all the remainder—\$23,270.69—of the year 1914 being represented by the revenue (gross) from dining and buffet service.

†In 1916, the end of the Company's fiscal year was changed from June 30th to December 31st.

Comparative Statement of Earnings and Expenses

Italics indicate decrease

Passenger and excess baggage	Mall and express	Miscellaneous	Total	Operating expenses	Operating ratio	Net operating revenue
\$210,248.78	\$50,085.08	\$63,668.26	\$2,063,190.48	\$1,453,124.50	70.43%	\$610,065.98
257,833.27	60,142.91	46,231.10	3,671,224.06	2,179,671.05	59.37%	1,491,553.01
22.63%	20.08%	27.39%	77.94%	50.00%		144.49%
263,978.45	63,207.70	74,010.22	4,837,598.26	2,971,791.74	61.43%	1,865,806.52
2.38%	5.10%	60.09%	31.77%	36.34%		25.09%
339,942.65	66,374.40	85,418.18	5,842,583.73	3,374,156.27	57.75%	2,468,427.46
28.78%	5.01%	15.41%	20.77%	13.54%		32.30%
387,992.51	77,106.00	84,335.54	6,340,079.45	3,533,220.63	55.73%	2,806,858.82
14.13%	16.17%	1.27%	8.51%	4.71%		13.71%
403,448.42	72,254.97	274,211.53*	5,820,405.76	3,376,851.41	58.02%	2,443,554.35
3.98%	6.29%	225.14%	8.20%	4.43%		12.94%
455,954.63	72,559.83	363,873.08	7,390,381.58	3,844,625.95	52.02%	3,545,755.63
13.01%	0.42%	32.70%	26.97%	13.85%		45.11%
503,296.24	76,078.12	456,875.15	9,500,157.95	5,045,113.00	53.11%	4,455,044.95
10.38%	4.85%	25.56%	28.55%	31.23%		25.64%
585,091.33	78,100.22	514,778.00	10,242,472.57	5,698,861.57	55.64%	4,543,611.00
495,050.00	78,949.16	412,343.38	8,455,964.27	4,291,657.89	50.75%	4,164,306.38
18.19%	1.09%	24.84%	21.13%	32.79%		9.11%

red with previous years was due to a change in Interstate Commerce Commission Classification of Accounts, whereby certain accounts previously carried in and the expense thereof to Operating Expenses. With the Virginian Railway, the accounts so transferred consisted almost entirely of the revenue from and he fiscal year 1915, practically all the remainder—\$23,270.69—of the increase in Miscellaneous Operating Revenue for the fiscal year 1915 over the fiscal

only market enjoyed by its coal producers was the limited and highly competitive market in the Southeast reached over the Southern Railway and other north and south connecting lines.

From shortly after the beginning of the war in 1914 and extending through 1915, the demand for vessels to carry munitions, foodstuffs and other high class freight abroad was so great and ocean freight rates reached so high a figure that a great many vessels theretofore engaged in coastwise or export traffic in coal were withdrawn therefrom to handle the new export business. This resulted in a great diminution in the volume of tidewater coal.

The coal producers on the Virginian Railway, lacking through routes and joint rates to the West, were not able to ship any of their former tidewater tonnage to the West, nor to increase substantially their business to local points on the Virginian Railway, nor, against the competition of other West Virginia, Virginia, Kentucky, Tennessee and Alabama producers, to increase their shipments into the Southeast, and, therefore, the loss in tidewater tonnage was an absolute loss to them and to Appellant.

In the case of other carriers engaged in the tidewater coal business through Atlantic ports, tidewater coal was relatively a small part of their coal business and coal relatively a small part of their total business; they either had their own lines into the West and Northwest or reached western gateways and had through routes and joint rates for the shipment of coal to the West and Northwest. Some of them had all rail connections to New England, and most of them had large coal consuming markets on their own rails, so that their coal producers were able to ship to local markets, to New England, or to the West and Northwest nearly or quite all the coal which ordinarily would have gone to tidewater; some, at least, of the other carriers increased the volume of their coal business during the period mentioned. In addition, the other carriers handling tidewater coal enjoyed, during the period aforesaid, greatly increased business in other lines, particularly the foodstuffs and munitions exported in vessels which had formerly carried coal, while Applicant had practically none of such compensatory traffic, but on the contrary, and because a large part of its freight, other than coal, consists of supplies, etc.,

for the coal mines, and this traffic, of course, corresponds closely in proportion with the volume of the coal traffic, its other freight business fell off substantially.

To recapitulate, the conditions affecting for the period mentioned the traffic of tidewater coal carriers were not the result of general business depression, unusually bad weather, damage by flood or fire, strikes at the sources of production, or any of the other causes, for which a prudent man must make reasonable allowances in estimating the amount of business to be done by a given railroad within any substantial period of time, but were most exceptional and their cause such as never before had occurred. With a great need and a corresponding demand for tidewater coal on our own Eastern seaboard, in the West Indies, in South America and overseas, with the mines in condition to produce more coal than ever before, with the railways able to handle at least as much as they had ever handled before, the business fell off greatly because the vessels could not be had to take the coal from the piers to the consumers.

Because the other principal tidewater coal carriers were able to turn nearly or quite all their tidewater coal tonnage into other channels, and in addition had large increases in their higher class freight, while Applicant not only was unable to find other channels for its tidewater coal but also lost substantially in its other freight revenues, its hardship was peculiar. And even if Applicant railway were a seasoned property, the rental value of which could ordinarily be fairly determined by its average annual railway operating income over a reasonable period, it would not be fair to apply the measure of the average annual railway operating income for the period named in the Act without making due allowance for this particular hardship.

Applicant's coal tonnage (excluding company coal) for the last four months of 1914 and the year 1915—16 months—as compared with the tonnage for the preceding 16 months fell short 236,927 tons, and as compared with the following 16 months, when more vessels became available to handle tidewater tonnage, was short 2,526,161 tons. Applicant had substantially the same equipment in use during all the three year period, and the mines on and reached via its line in each year of the three were capable of producing probably twice as great a tonnage as was handled in any of the

three, and there was a demand for all the coal that could be produced on its line, so that it is believed that, except for the peculiar hardship above set forth, Applicant would have handled during the three year period at least 1,381,544 tons more coal—the average of the two shortages above mentioned—producing \$1,657,852.80 more coal freight revenue at Applicant's then average freight revenue of \$1.20 per ton of coal. But, as has been indicated, there has always been a close relation between Applicant's coal freight revenue and its other operating revenues, owing to the fact that so large a part of such other revenues is made up of freight and express receipts upon merchandise, machinery and supplies going to the mines, port charges for vessels docking at Applicant's pier to load coal and trimming charges upon coal loaded in vessels. The aggregate of such other revenues in the fiscal year 1915, in which fell 10 months of this period of peculiar hardship, was 33.49% of the coal freight revenue for said year, and the aggregate of such other revenues for the two fiscal years ended June 30, 1916, was 31.12% of the coal freight revenue for said years. Taking the lower figure and applying it to the estimated shortage in coal freight revenue for the 16 months period gives an estimated shortage in other operating revenues for the period of \$515,923.79, making a total estimated loss of gross operating revenue, on account of these exceptional conditions in 1914 and 1915, of \$2,173,776.59. If this estimated revenue be divided between the two fiscal years involved in proportion of the coal handled in the 10 months of said 16 months period falling in the fiscal year 1915 as compared with the 6 months falling in the fiscal year 1916, 58.73% or \$1,276,658.99 will be allotted to the fiscal year 1915, which, added to the actual gross operating revenue for that year of \$5,820,405.76, will make an assumed gross operating revenue for said year \$7,097,064.75; similarly if 41.27% or \$897,117.60 be added to the actual gross operating revenue for the fiscal year 1916 of \$7,390,381.58, an assumed gross operating revenue for said year of \$8,287,499.18 results.

[fol. 1217] An examination of the records for the fiscal years ended June 30, 1912 to 1916, inclusive (see page 7), will show that Applicant's operating ratio decreased or in-

creased practically 1% for each increase or decrease of \$250,000.00 in the gross operating revenue. Using this precedent would give an assumed operating ratio for the fiscal year 1915 of a little less than 53%, and applying this ratio to the assumed gross revenue for said year gives a net railway operating revenue of \$3,335,620.43, an increase of \$892,066.08 over the actual net railway operating revenue for said year of \$2,443,554.35. The same precedent gives an assumed operating ratio for the fiscal year 1916 of a little less than 49%, and applying this ratio of 49% to the assumed gross revenue for said year gives a net railway operating revenue of \$4,226,624.58, an increase of \$680,868.95 over the actual net railway operating revenue for said year of \$3,545,755.63. But the increases of gross and net revenues for these years would mean corresponding increases in the taxes payable by Applicant on the basis of revenue, net or gross, viz., the Federal Income Tax, the Franchise Tax of the State of Virginia and the Corporation Excise Tax of the State of West Virginia; these tax increases on the assumed increases in revenues would have aggregated for the fiscal year 1915 \$20,623.48 and for the fiscal year 1916, \$15,478.37. Deducting these taxes would make the net increase for 1915 \$871,442.60 and for 1916 \$665,390.58. The sum of these two increases is \$1,536,833.18, which we believe fairly represents the loss suffered in the test period by Applicant by reason of the hardship to which it was peculiarly subjected by this loss of tidewater tonnage, and this averaged over the three years of the test period gives an annual average loss of \$512,277.72.

These figures are presented only to show that the "standard return" is plainly inequitable as a fair measure of just compensation in this case because of the great losses due to the falling off of Applicant's tidewater coal business during a portion of the three year period. But even the "standard return" increased by the above shown average annual loss of \$512,277.72 would not fairly measure the just compensation to which Applicant is entitled, since it does not take into consideration the heavy expenditures upon Applicant's property not reflected, or not fully reflected, in the operations of the three year period, as pointed out in succeeding paragraphs of this application, its record of growth and development during its entire history, set forth hereafter in

this application, and its promise for the future also as set forth in the following pages.

IV

Recent Expenditures Not Fully Reflected in the Railway Operating Income in the Three-year Period Ended June 30, 1917

The expenditures of Applicant for additions, betterments and equipment since June 30, 1914, divided according to the fiscal years, and including the expenditures of the last six months of the calendar year 1917, follow. These expenditures are also divided according to the principal items thereof.

Statement Showing Construction and Equipment Expenditures for the Year Ended June 30, 1915

Construction—Main Line:

Ballasting	\$80,258.26
Passing Tracks and Extensions.	42,884.71
Yard Tracks.....	47,489.47
Water Supply.....	2,511.01
Shops and Enginehouses.....	10,239.43
Tunnels	96,461.82
Bridges, Trestles and Culverts..	34,593.74
Mine Tracks.....	18,203.96
Relaying with 100-lb. Rail.....	26,195.23
Miscellaneous	19,145.47

Forward	\$377,983.10
---------------	--------------

[fol. 1218]

Brought Forward	\$377,983.10
-----------------------	--------------

Construction—Branch Lines:

Winding Gulf Branch.....	\$43,981.28
Allen Creek Branch.....	35,206.39
Devils Fork Branch.....	9,679.50
Stone Coal Branch.....	4,804.41
Shockley Branch.....	610.25
	<hr/>
	94,281.83

Improvements—Sewalls Point Coal Pier:

Bulkhead and Pile Breakwater.	\$23,066.24	
Boush Creek Bridge.....	14,165.62	
Coal and Industrial Tracks....	7,168.86	
Storage Tracks.....	16,806.81	
Miscellaneous	7,011.10	
		<hr/> 68,218.63

Equipment:

Purchase of 775 Steel Gondolas, average delivery August, 1914	\$694,025.27	
Cost of applying steel under- frames to Stock Cars.....	31,988.73	
Application of Federal Safety Appliances	15,484.51	
Application of Automatic Stok- ers, Superheaters and Equal- ized Trucks to Locomotives..	12,907.55	
Miscellaneous	2,072.28	
		<hr/> 756,478.34

Expended for Improvements on Piney River and Paint Creek Railroad	8,722.22	
Total	\$1,305,684.12	

Statement Showing Construction and Equipment Expenditures for the Year Ended June 30, 1916

Construction—Main Line:

Ballasting	\$49,376.08	
Passing Tracks and Extensions.	22,465.92	
Fencing	7,758.05	
Water Supply.....	4,247.45	
Shops and Enginehouses.....	14,205.73	
Crossings and Signs.....	4,049.94	
Bridges, Trestles and Culverts.	17,116.94	
Mine Tracks.....	46,649.69	
Relaying with 100-lb. Rail.....	7,980.14	
Station Office and Roadway Buildings	7,360.75	
Ditching, Widening and Tiling Cuts	22,506.10	
Miscellaneous	38,503.02	
		<hr/> \$242,219.81

Construction—Branch Lines:

Allen Creek Branch.....	\$3,729.88	
Devils Fork Branch.....	16,004.07	
Stone Coal Branch.....	182,031.45	
Piney Creek Branch.....	111,086.40	
Laurel Branch.....	1,450.77	
Survey for Additional Branch Lines	36,660.03	
		<hr/> 350,962.60

Improvements—Sewalls Point Coal Pier:

Renewing Deck with Creosoted Timber	\$2,086.91	
Rip Rap Track.....	1,171.38	
High Chute on Coal Pier.....	2,644.19	
Miscellaneous	1,821.26	
		<hr/> 7,723.74

Forward	\$600,906.15
---------------	--------------

[fol. 1219]

Brought forward	\$600,906.15
-----------------------	--------------

Equipment:

Cost of applying Steel Under- frames to Stock and Box Cars.	\$33,546.03	
Application of Federal Safety Appliances	10,090.27	
Application of Automatic Stok- ers and Superheaters to Loco- motives	19,794.60	
Two Baggage Box Cars, in serv- ice October, 1915.....	3,069.47	
Expenditures in connection with the purchase of 250 steel Box Cars, four 120-ton Gondolas and one 300-ton Coal Barge..	73,592.75	
Miscellaneous	283.08	
		<hr/> 140,376.20

Expenditures for Stone Crushing Plant at Klotz, Va. (Ballast Production).....	19,694.18
Expended for Improvements on Piney River and Paint Creek Railroad	61.02
Total	<u>\$761,037.55</u>

Statement Showing Construction and Equipment Expenditures for the Year Ended June 30, 1917

Construction—Main Line:

Ballasting	\$44,370.53
Passing Tracks and Extensions.	92,357.21
Yard Tracks.....	12,405.94
Fencing	1,875.78
Water Supply.....	17,628.19
Shops and Enginehouses.....	38,428.27
Mine Tracks.....	18,788.89
Relaying with 100-lb. Rail.....	31,145.60
Station and Office Building.....	15,823.96
Ditching, Widening and Tiling Cuts	18,151.05
Coaling and Sanding Stations..	8,697.03
Miscellaneous	16,361.74
	<u>\$316,034.19</u>

Construction—Branch Lines:

Stone Coal Branch.....	\$53,205.28
Piney Creek Branch.....	187,488.84
Laurel Branch.....	66,805.63
Guyandotte River Branch.....	6,236.44
Lampkin Branch.....	38,687.90
Beards Fork Branch.....	7,117.91
Devils Fork Branch.....	260.14
Surveys for Additional Branch Lines	3,917.81
	<u>363,719.95</u>

Improvements—Sewalls Point Coal Pier:

Dredging beyond Original Depth	\$22,110.78	
Additional Improvements to Coal Pier and Plant.....	75,955.36	
		98,066.14

Equipment:

One 300-ton Coal Barge, delivered November, 1916.....	\$4,634.26	
250 40-ton Box Cars, average delivery October, 1916.....	208,427.23	
One Jordan Spreader, in service January, 1917.....	6,104.88	
One Caboose Car, in service April, 1917.....	1,232.53	
10 Camp Cars, in service February, 1917.....	9,793.84	
Six Dump Cars, in service April, 1917	16,325.02	
Miscellaneous	12,150.65	
		258,668.41

Expenditures for Stone Crushing Plant at Klotz Va. (Ballast Production)	240,804.86
---	------------

Expended for Improvements on Piney River and Paint Creek Railroad	147.98
---	--------

Total \$1,277,441.53

[fol. 1220] Statement Showing Construction and Equipment Expenditures for Six Months Period Ended December 31, 1917

Construction—Main Line:

Ballasting	\$103,793.91
Passing Tracks and Extensions.	25,041.04
Yard Tracks.....	1,835.11
Double Tracking (Clarks Gap Hill)	139,207.41
Mine Tracks.....	10,669.65
Water Supply.....	2,053.30
Relaying with 100-lb. Rail.....	22,115.33

Station Office and Roadway	
Buildings	13,013.05
Ditching, Widening and Tiling	
Cuts	4,796.06
Telegraph and Telephone Lines.	19,283.52
Tunnels	27,489.98
Miscellaneous	262.60
	<hr/>
	\$369,560.96

Construction—Branch Lines:

Purchase Price—White Oak	
Railway	\$379,500.00
Stone Coal Branch.....	15,601.72
Devils Fork Branch.....	5,010.24
Allen Creek Branch.....	2,591.63
Guyandotte River Branch.....	35,621.32
Beards Fork Branch.....	64,506.36
Piney Creek Branch.....	22,641.75
Laurel Fork Branch.....	11,597.10
Lampkin Branch.....	9,451.97
Miscellaneous	28,632.66
	<hr/>
	575,154.75

Improvements—Sewalls Point Coal Pier:

Additional Improvements to	
Coal Pier and Plant.....	388,149.16

Equipment:

One Articulated Locomotive	
#700, put in service January,	
1917	\$77,402.81
Four 120-ton Gondolas, put in	
service June, 1917.....	50,617.04
665 Steel Hopper Cars, put in	
service December, 1917.....	1,630,109.40
One Business Car (New River),	
put in service July, 1917.....	16,000.00
Miscellaneous	16,005.37
	<hr/>
	1,790,134.62

Expenditures for Stone Crush-	
ing Plant at Klotz Va. (Bal-	
last Production).....	52,371.28

Total	\$3,175,370.77
-------------	----------------

The aggregate for the 42 months is \$6,519,533.97.

In addition, note that 335 more coal cars costing \$821,-182.15 were due for delivery in the latter part of 1917 and were delivered early in 1918, and that 10 Mallet locomotives costing \$967,700 were also due for delivery in the fall of 1917 and deliveries thereof began early in 1918.

An idea of the large freight producing value of the branch lines as compared with their cost, the rapid development of business thereon, and the extent to which the sums invested in branch lines during the test period were not reflected in the earnings of the test period may be gathered from the following statement of tonnage produced from Allen Creek, Stone Coal and Devils Fork Branches and the Piney Creek Extension during the period between July 1, 1914, and January 1, 1918.

	Allen Creek branch	Stone Coal branch	Devils Fork branch	Piney Creek extension
July 1, 1914, to June 30,				
1915	40,740	.....	.....	.....
July 1, 1915, to June 30,				
1916	130,182	.....	11,344	.....
July 1, 1916, to June 30,				
1917	185,072	194,964	32,207	118,283
Calendar Year 1917....	181,383	418,577	44,032	288,263

[fol. 1221]

V

The Distinctive usefulness of the Virginian Railway to the Government

No one of the railroads taken over January 1, 1918, mileage and investment considered, was more important to the conduct of the war or had greater possibilities of usefulness to the Government than the Virginian Railway.

No commodity was more in demand everywhere in the country than coal, and nowhere was coal more in demand than on the Atlantic seaboard and at Hampton Roads, where the demand was particularly for the high grade, low volatile, so-called "smokeless" coals of southern West

Virginia for our Navy, the navies of our Allies, transports, vessels carrying munitions and supplies and for supplying in a great measure the needs of New England and its manufacturers and public utilities.

The Virginian was specially planned, built and equipped for a coal carrying road, and the coal development on its line consists almost entirely of the smokeless coals. In the coal fields, the grades and curvature of its line, as with other West Virginia coal roads, are necessarily frequently heavy, but from Princeton, which may be regarded as the entrance to and exit from the coal fields, eastward to tide-water it has no grade against the load exceeding .2 of 1%, except about nine miles crossing the Alleghenies, where its gradient is .6 of 1% compensated. With its low grades after leaving the coal fields, it has heavy motive power, almost no small or old coal cars, practically all those now in use being all-steel and having a capacity of 50 tons or over, and long passing tracks, so that in regular practice its trains have carried the heaviest paying load of any railroad in the country. Its passenger business is relatively light, and its freight business being nearly 90% coal, its freight traffic has been and is comparatively free from interference by passenger traffic, and the movement of other freight interferes but little with the prompt dispatch of coal. Its terminal at Sewalls Point is situated nearer the Capes and the Ocean than that of any other carrier terminating at Hampton Roads, and it has a modern coal pier equipped for mechanically unloading coal cars, the first of its kind to be constructed at Hampton Roads. This pier has a repeatedly demonstrated capacity of dumping more than 25,000 tons of coal in a day, and when the property was taken over by the Government there was under way the installation of an additional dumping machine with necessary appurtenances, which was completed in 1918, and which is estimated to increase the dumping capacity of the pier at least 50%.

In the coal fields, the tracks of the Virginian Railway are so situated with reference to the tracks of the Chesapeake & Ohio Railway, and to some extent with reference to the tracks of the Norfolk & Western Railway, as to per-

mit, should occasion require it, the diversion of coal from mines on one road to the other; and from Princeton east the Norfolk & Western and Virginian Railways are roughly parallel to one another, with connections at several points, so as to permit them to be operated as one system and permit Norfolk & Western heavy trains to be moved over the Virginian Railway, thereby taking advantage of the latter's lower grades between Roanoke and Norfolk.

The coal development on the Virginian Railway consists almost entirely of the high grade smokeless coals, practically all of its mines are new ones, and these mines, given market, transportation and men, are easily capable of a production of 14,000,000 tons per annum. It is believed that no coal field in the country was capable of as great a relative expansion of output in so short a time as that of the Virginian Railway.

[fol. 1222]

VI

Applicant's Compensation

It is not, of course, contended that the measure of the just compensation to which Applicant is entitled is the need of the Government nor the profit which the property might earn under Government operation any more than it would be admitted that the compensation to which Applicant is justly entitled should be reduced if the Railroad Administration saw fit to use the Virginian Railway and the Virginian equipment alone or in connection with other railroads under the control of the United States Railroad Administration so as to diminish the profits coming into the common treasury through the Virginian Railway channel. The test of the just compensation to which Applicant is entitled would seem to be the value of the use of the property as a railway property during the period of Federal control, and the determination of this value should be upon the same principles as those which would govern the determination of an award in an ordinary condemnation proceeding, that is to say, the same considerations as those which would govern an agreement upon price in an ordinary business transaction not influenced by any necessity on the part of the seller to sell or on the part of the purchaser to purchase.

In the case of the great majority in numbers of the railroads taken over on January 1, 1918, representing a still greater proportion of values, the properties were seasoned railroads, and Congress might well assume that the average earnings for a period of three years should be taken as *prima facie* evidence of a reasonable rental value, and authorize the President to contract with any carrier on this basis (it may be noted here that Congress could not determine the measure of compensation, as was held in *Monongahela Navigation Company vs. United States*, 148 U. S. 312), but Congress in the sixth paragraph of Section 1 of the Act of March 21, 1918, recognized that there must be exceptions to the general rule, and therefore authorized the President to make contracts on a more liberal basis.

Whether the subject of a sale or lease be a mine, a factory, a railway, or any other property, if at the time of the transaction its business is not wholly developed, but is in a state of expansion and growth, its value cannot be measured by past records, but in order to trade, with no necessity on the part of the seller or lessor to sell or lease, proper allowance must be made for the results which may reasonably be relied upon for the future, and justice requires that in the case of a compulsory sale or lease the same allowance shall be made in determining the compensation to be awarded. That Applicant's business was in a condition of vigorous development during the entire three year period and that its promise of growth was never greater than when the railway was taken over by the Government on January 1, 1918, are apparent from all the facts.

At the beginning of the three year period, 42 mines only were shipping coal over the Virginian, and, at the end of the three year period, 80 mines were so shipping, while six months later when the property was taken over there were 87 mines so shipping, with 8 more due to begin shipping in 1918, some of them very early in the year. Of the 87 mines in operation January 1, 1918, 21 had begun shipments in 1917, and 8 of these in the last half of the year, so that as against the average number of mines shipping during the three year period—61—and the number ship-

ping at the end of the period—80—the Railroad Administration should have had shipments during its first year of operation of the property from 95 mines. To help take care of the anticipated increase in coal shipments, Applicant had provided an increase of more than 26% in its motive power and 17% in its coal car capacity, equivalent probably to more than 20% increase in its capacity to haul coal, and had provided for duplicating the mechanical equipment of its coal pier and increasing its dumping capacity more than 50%.

The increase in its business other than coal is apparent from the statement of gross and net operating revenues on page 7 hereof, and it may be noted that gross revenue other than coal freight for 1917 was more than 28% greater than the average for the three year period.

[fol. 1223] Gross operating revenue for the last fiscal year preceding the three year period was \$6,340,079.45 as against \$9,500,157.95 for the last year of the period, and \$10,242,422.57 for the calendar and fiscal year 1917. Net operating revenue for the last fiscal year preceding the period was \$2,806,858.82 as against \$4,455,044.95 for the last year thereof, and \$4,543,611.00 for the calendar year 1917, notwithstanding the great increases in operating expenses between July 1, 1916, and January 1, 1918. The average annual railway operating income certified by the Commission is \$3,247,603.41; calculated on the same basis, the railway operating income for 1917 was \$4,298,283.50. Note also that there were substantial increases in gross and net operating revenues for the calendar year 1917 over those for the year ended June 30, 1917, showing that the expansion of Applicant's business was continuing when its railroad was taken over.

With the great capacity for expansion of the output of the coal fields tributary to the line of Applicant's railway, the increased business in other freight necessarily incident to an increased coal output and the increase in other freight business inevitably resulting from the increased and increasing number of shippers and receivers of freight other than coal companies, including the Naval Base, Army Base and Navy Coal Storage Plant near Sewalls Point,

and the preparations which Applicant had made and was making for handling its increase of business, it cannot be doubted that Applicant's business would have continued its growth without slowing up.

Unquestionably, with such a property, the average annual railway operating income for the three year period of 3,247,603.41 would be a ridiculously inadequate annual compensation for the use of the property for a period beginning January 1, 1918, nor would the making of an allowance for the peculiar hardship suffered by Applicant in the years 1914 and 1915 make more than a substantial approach toward just compensation.

While in the case of a seasoned railroad the average annual railway operating income for the three year test period should be a fair measure of the annual rental value at the end of the test period of the property in use during the test period, in the case of an undeveloped but steadily devedoping railroad with a record of constant and substantial growth in its business and earnings the record of its last fiscal year should be, not the full measure of the annual rental value of the property in use during such year for any future period, but the basic factor of the rental value for future use, the starting point for computing or estimating such value. The railway operating income of Applicant for the last fiscal year of its operation of its property, that ended December 31, 1917, calculated on the same basis as used by the Interstate Commerce Commission in arriving at the average annual railway operating income certified by it under the Act of March 21, 1918, was \$4,298,283.50.

But while the results of the last fiscal year may be regarded as being fairly an equivalent in the case of this property to the average annual railway operating income for the test period in the case of a seasoned property, this figure does not reflect the fact that Applicant's property and business were when taken over, as during its entire history, growing and increasing, and if Applicant had been permitted to retain and manage its own property in the interest of its stockholders, it is morally certain that its earnings would have continued to increase year by year. And it is re-

spectfully submitted that just compensation to Applicant for the use of its property under Federal control must take this fact into consideration.

As has been seen, excluding the results of the first year after Applicant's property was placed formally in operation, the average rate of increase of the railway operating income of each year over the preceding year has been about 21%. As has also been seen Applicant's property was never in better shape to justify the expectation of increased earnings than when it was taken over. The number of mines and their aggregate capacity were such as to guarantee the supply of all the coal that the market could take and Applicant could handle; at no precious time had the demand for coal been so great; Applicant's recent purchase of coal cars and locomotives had put it in a position to increase its coal tonnage handled by at least 20%; increased coal tonnage meant increased earnings in all the other items of operating revenues; and with the tremendous [fol. 1224] demands upon all the other Eastern roads for the transportation of general freight, Applicant's prospects for a large increase in its through freight business were never so bright. We submit that all things considered it is entirely conservative to assume that the average annual increase in Applicant's railway operating income for several years to come would have been at least 10%. Applying this rate to the railway operating income for its last fiscal year, the calendar year 1917, would give for 1918, \$4,728,111.85, for 1919 \$5,200,923.03 and for 1920 \$5,721,015.33.

Apparently the operation by the United States Railroad Administration of the railroad systems of the country will not extend beyond the year 1920 and apparently it will not cease much, if any, before the end of that year. Assuming that Federal Control will extend substantially over the period from January 1, 1918, to December 31, 1920, inclusive, a fair rental would seem to be the average of the conservatively estimated annual railway operating income for said years respectively, if Applicant had retained possession, control and management of its property, or \$5,216,-

683.40, and to substantially this amount Applicant respectfully submits it is entitled.

The Virginian Railway Company, by C. W. Huntington, President. E. W. Knight, General Counsel.
New York, March 17, 1919.

(Here follow tables, side folio pages 1225, 1226, 1227, and
1228)

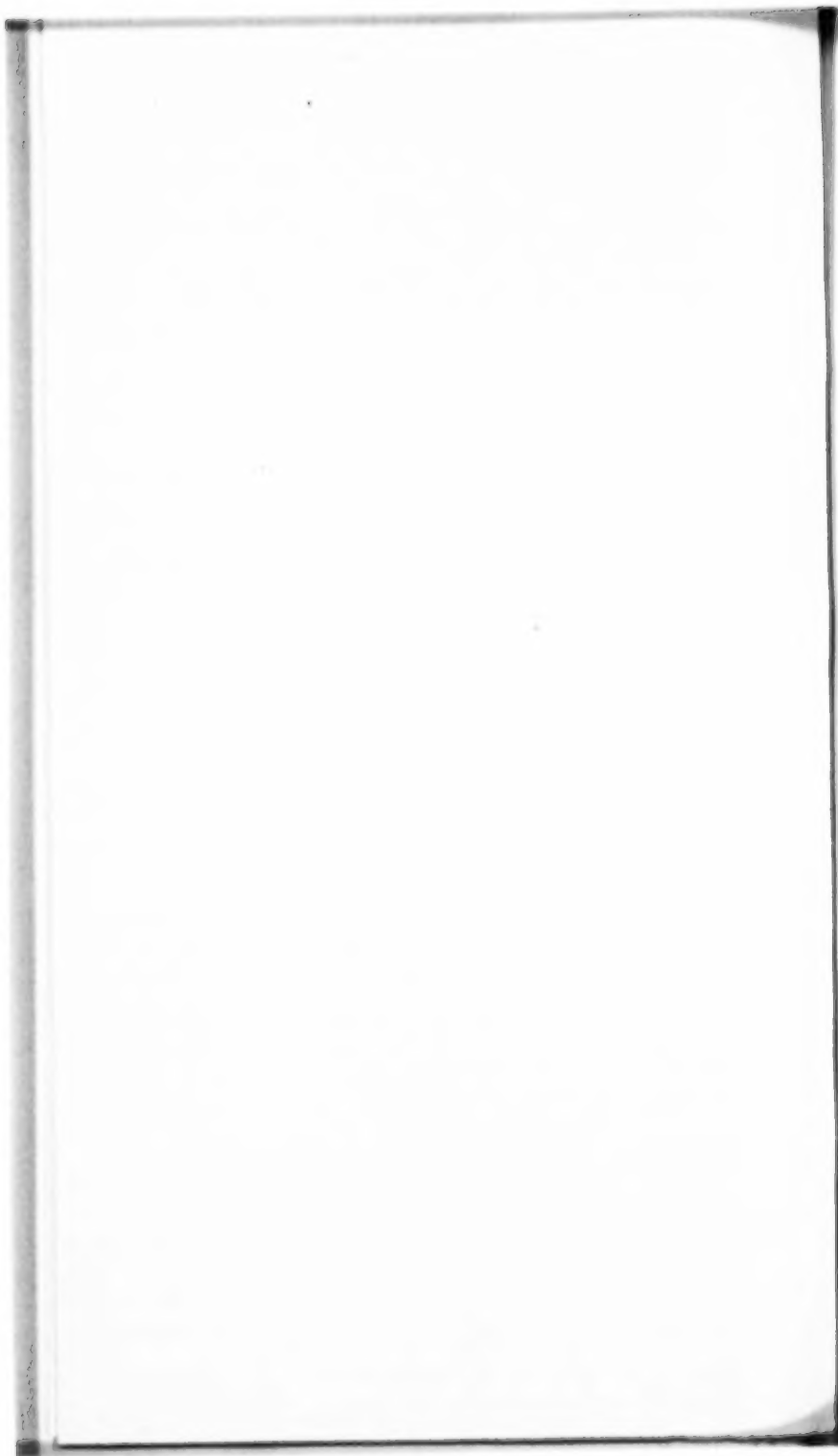
CHART

TOO

LARGE

FOR

FILMING



[fol. 1229] Numerical List of Mine Numbers and List of
Mine Locations in Geographical Order

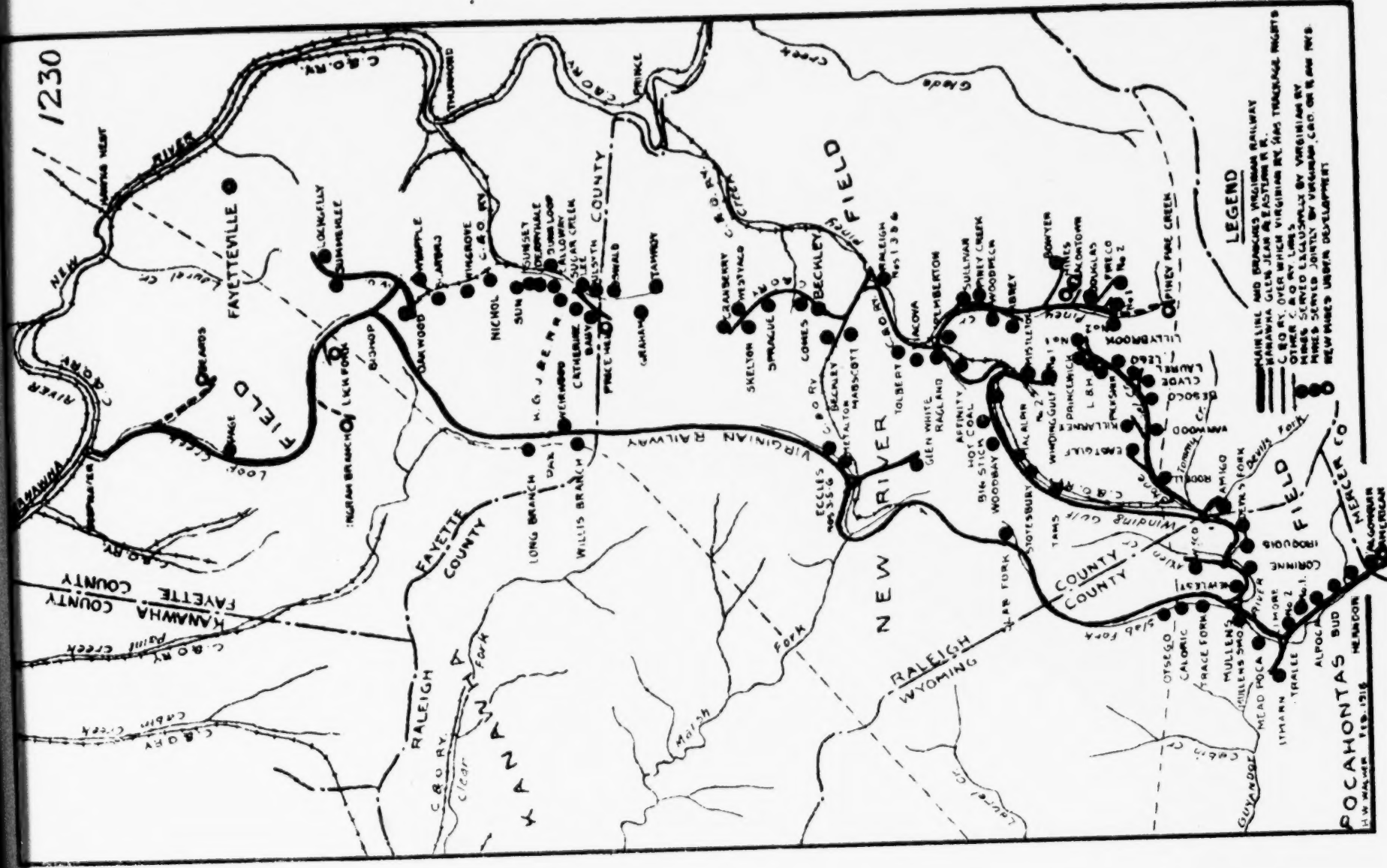
Mine Nos.	Mine locations	
5	America	W. Va.
10	Algonquin	W. Va.
15	Covel	W. Va.
20	Herndon	W. Va.
23	Montecarlo	W. Va.
25	Bud	W. Va.
30	Alpoca	W. Va.
40}		
45}	Tralee	W. Va.
50}		
55}		
60}	Itmann	W. Va.
65	M-P Tipple	W. Va.
WG-75}		
WG-80}	Corinne	W. Va.
AB-85	Allen Br., Wyco	W. Va.
WG-90	Iroquois	W. Va.
WG-95	Devils Fork	W. Va.
DF-100	Devils Fork Br., Amigo Mine	W. Va.
SC-105		
SC-110}	Tommy Creek	W. Va.
SC-115}		
SC-118	Rhodell	W. Va.
SC-120	Francis	W. Va.
SC-125	East Gulf	W. Va.
SC-130	Killarney	W. Va.
SC-135}	Vanwood	W. Va.
SC-140}		
SC-145}	Besoro	W. Va.
SC-150}		
SC-155	Lego	W. Va.
SC-160}	Pickshin	W. Va.
SC-165}	Lillybrook	W. Va.
SC-170	Princewick	W. Va.
WG-175}		
WG-180}		
WG-185}	Helen	W. Va.
WG-190		
WG-195	Tams	W. Va.
WG-200	Stotesbury	W. Va.
WG-205	MacAlpin	W. Va.
	Woodbay	W. Va.

7
3
7

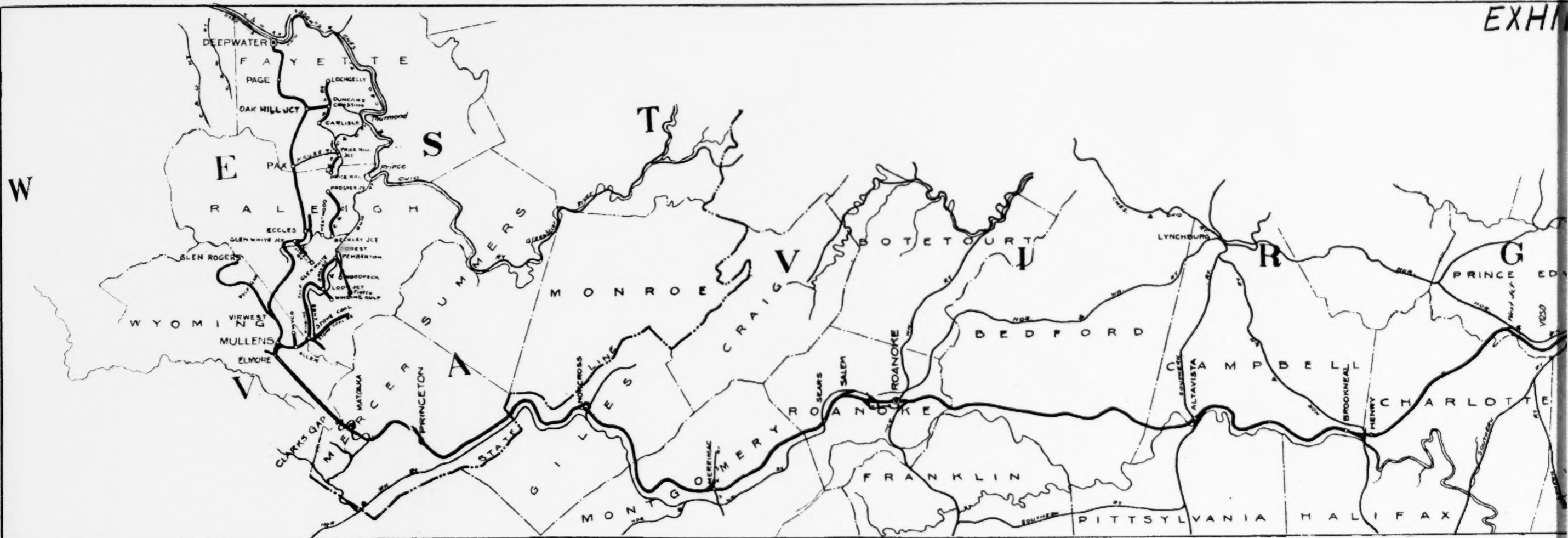
Mine Nos.

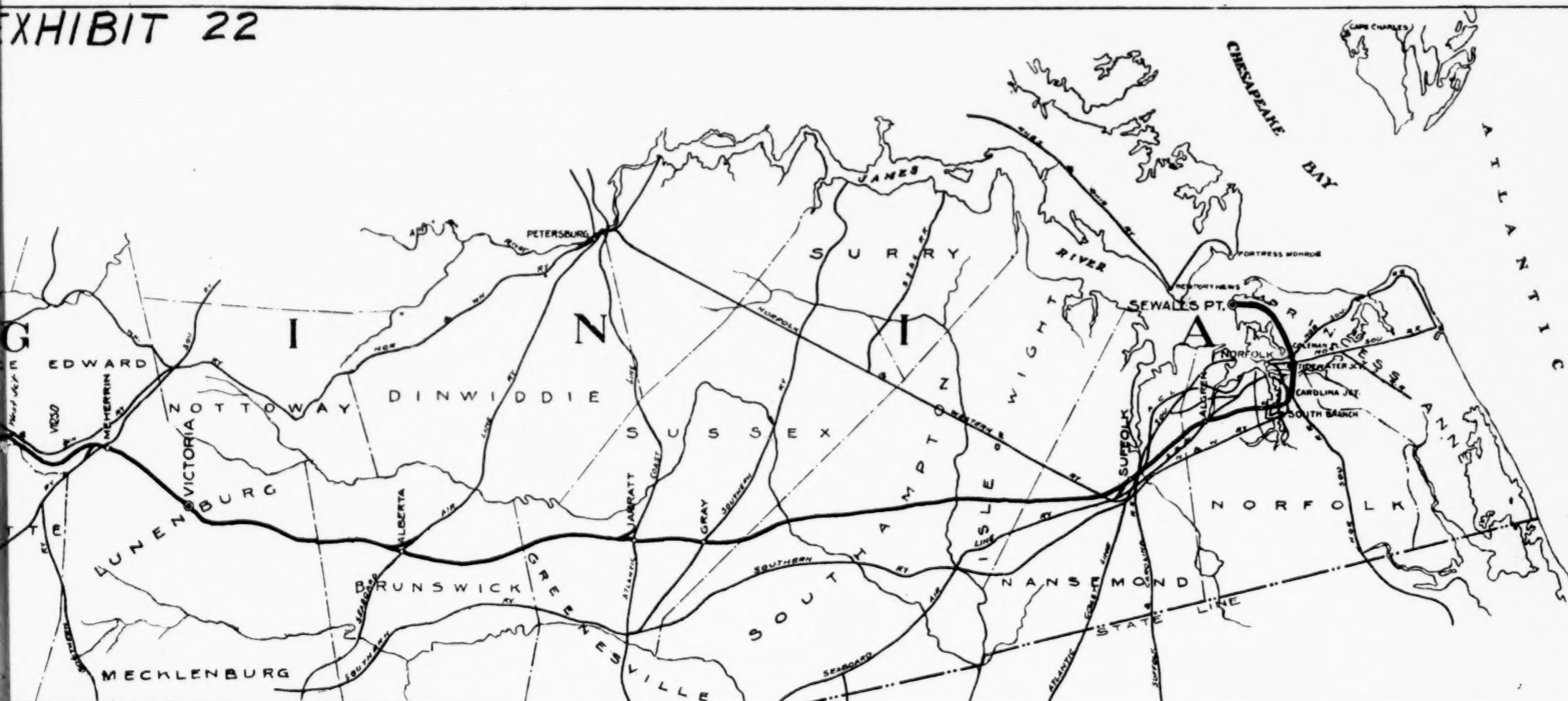
Mine locations

WG-210	Winding Gulf Branch.	Big Stick	W. Va.
WG-215		Hot Coal	W. Va.
CS-220		Collins Spur, Mistletoe	W. Va.
CS-225		Winding Gulf	W. Va.
WG-230		Affinity	W. Va.
WG-235		Pemberton	W. Va.
WG-240		McVey	W. Va.
WG-243		Sullivan	W. Va.
WG-245		Wiley	W. Va.
WG-250		Phillips	W. Va.
WG-253		Abney	W. Va.
WG-255		Whitby	W. Va.
WG-260		Ralco	W. Va.
WG-265		Jonben	W. Va.
WG-275			
WG-285			
WG-290		Fireco	W. Va.
WG-295			
WG-300			
PR-305	Piney River Branch.	Viacova	W. Va.
PR-310		Tolbert	W. Va.
PR-315			
PR-320		Raleigh	W. Va.
PR-325			
PR-335		Mabscott	W. Va.
PR-330			
PR-340		Beckley	W. Va.
PR-350		Sprague	W. Va.
PR-355			
PR-360		Skelton	W. Va.
PR-365		Prosperity	W. Va.
370		Tracoal	W. Va.
375		Caloric	W. Va.
380		Otsego	W. Va.
385			
390		Slab Fork	W. Va.
395		Lester	W. Va.
SB-400		Shockley Branch, Glen White	W. Va.
405		Metalton	W. Va.
410			
415		Eccles	W. Va.
420			
425		Willis Branch	W. Va.
430		Weirwood	W. Va.



EXH



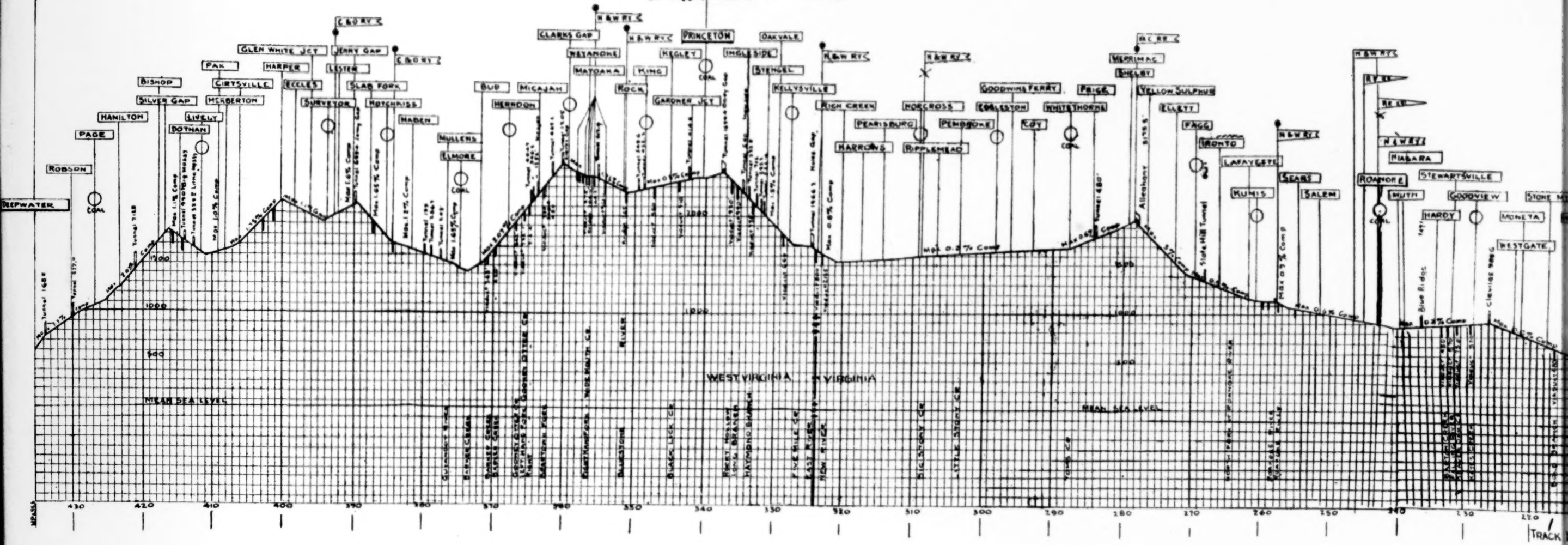


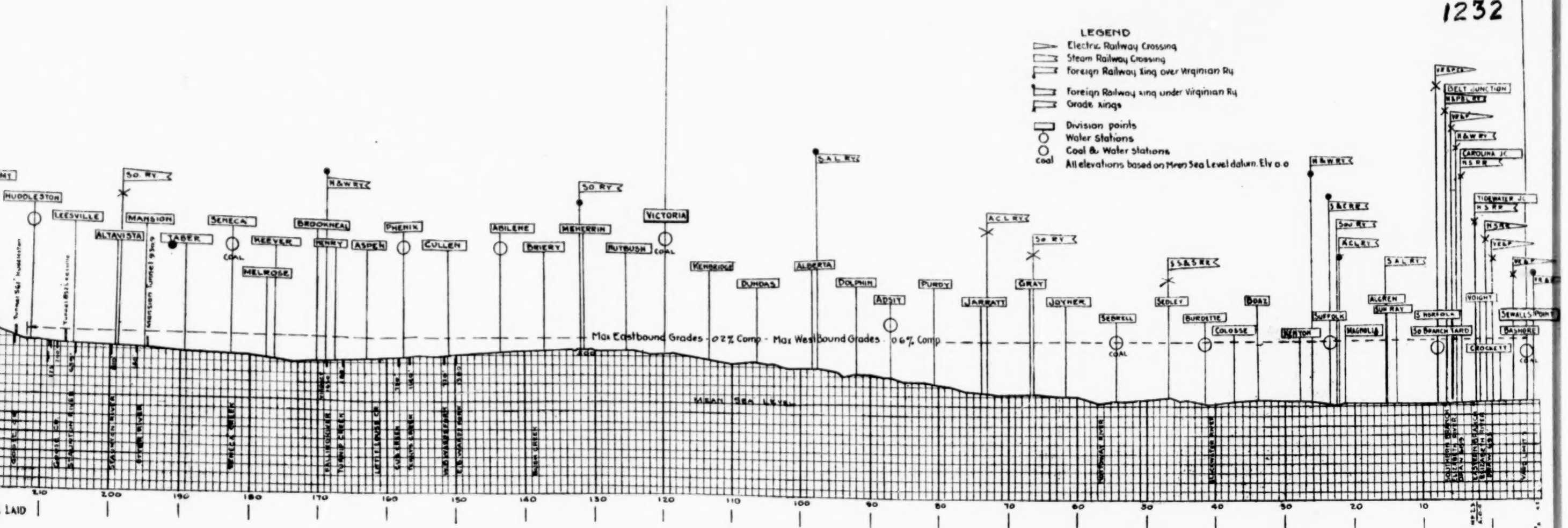
THE VIRGINIAN RAILWAY COMPANY

SCALE: 1 INCH = 7 MILES NOV. 26, 1919.
OFFICE OF CHIEF ENGINEER
NORFOLK, VA

LINES OWNED
 LINES LEASED
 DOUBLE TRACK

EXHIBIT 23





Mine Nos.

Mine locations

GJ-435	Kanawha, Jean & Eastern R. R.	Glen Jean	W. Va.
GJ-445		Sun	W. Va.
GJ-450		Sunset	W. Va.
GJ-455		Derryhale	W. Va.
GJ-460		Dunn Loop	W. Va.
GJ-465		Mt. Hope	W. Va.
GJ-470			
GJ-475		Sugar Creek Br., Sugar Creek	W. Va.
GJ-478		Packs	W. Va.
GJ-480		Kilsyth	W. Va.
GJ-481			
GJ-483		Price Hill	W. Va.
GJ-485		Cepee	W. Va.
GJ-490		Oswald	W. Va.
GJ-500		Tamroy	W. Va.
cog	Long	Branch	W. Va.
WO-510	White Oak Branch	Lochgelly	W. Va.
WO-515		Summerlee	W. Va.
WO-520		Oakwood	W. Va.
WO-525		Scarboro	W. Va.
WO-530		Whipple	W. Va.
535	Lick Fork		W. Va.
540	Ingram Branch		W. Va.
543	Glencoe		W. Va.
545	Page		W. Va.
BF-550	Beards Fork Br., Beards Fork		W. Va.

(Here follow map, side folio page 1230, and Exhibits 22 and 23, side folio pages 1231 and 1232)

[fol. 1233]

EXHIBIT 24

List of Improvements Necessary Between Elmore and Deepwater in Order to Handle Tonnage West in an Economical Manner

Elmore: Additional Engine House facilities and tracks in connection with same	\$180,000 00
Gulf Junction: Additional tracks to hold 200 cars	100,000 00
Virwest: Extension of track to hold 30 cars	5,100 00
Jenny Gap: Storage track to hold 150 cars	37,150 00
Harper: Storage track to hold 70 cars	20,800 00
Pax: Storage track to hold 100 cars	39,000 00
Long Branch: Storage track to hold 30 cars	11,000 00
Lively: Extent Passing -rack to hold 75 cars	17,150 00
Silver Gap: Storage track to hold 75 cars	42,800 00
Oak Hill Jet.: Extend, track to hold 100 cars	20,650 00
Lick Fork: Storage track to hold 20 cars	10,000 00
Ingram Branch: Storage track to hold 25 cars	13,300 00
Hamilton Extend Passing track to hold 75 cars	30,650 00
Page: Additional tracks to hold 200 cars	48,000 00
Robson: Extend track to hold 75 cars	30,300 00
Deepwater: Engine house facilities, coaling station Water Supply, Track Scales and tracks to hold 400 cars	530,000 00
Maben to Deepwater: Strengthening of Bridges	57,000 00
Mullens to Deepwater: Enlarging Tunnels to Standard Sect.	80,000 00
Page to Deepwater: Laying 100# Rail	18,300 00
	<hr/>
	\$1,291,200 00

Norfolk, Va., Nov. 9th, 1922.

[fol. 1234]

EXHIBIT 25

Statement Showing Number Tons Coal Handled per Car
per Annum Years 1917, 1918, 1919, 1920, 1921, and First
Six Months 1922 Based on Average Number Coal Cars
Owned

Year	Avg. number cars owned	Total net tons handled	Net tons handled per car per annum
1917	6,342	6,801,368	1,072
1918	7,241	6,727,474	929
1919	7,315	5,830,387	797
1920	7,309	7,641,540	1,045
1921	8,247	6,116,134	742
1st 6 mos. 1922 ..	8,241	3,726,434	904

C. E. Reynolds, Car Accountant.

Norfolk, Va., Nov. 11, 1922.

Statement Showing the Average Number of Days Vgn. Ry. Coal Cars Remained Off Line When Delivered Their Southern Connections Loaded with Coal, July to December, 1920, January to December, 1921, and January to June, 1922

	Southern			Seaboard Air Line			Atlantic Coast Line			Total		
	Altavista			Alberta			Jarratt					
	No. cars	No. days	Avg.	No. cars	No. days	Avg.	No. cars	No. days	Avg.	No. cars	No. days	Avg.
July, 1920	20	196	9.8	20	1,046	52.3	10	126	12.6	50	1,368	27.4
Aug., "	20	213	10.7	20	458	22.9	10	118	11.8	50	789	15.8
Sept., "	20	256	12.8	20	491	24.6	10	136	13.6	50	883	17.7
Oct., "	20	165	8.3	20	601	30.1	10	108	10.8	50	874	17.5
Nov., "	20	227	11.4	20	302	15.1	10	120	12.0	50	649	13.0
Dec., "	20	361	18.1	20	277	13.9	10	161	16.1	50	799	16.0
Total	120	1,418	11.8	120	3,175	26.5	60	769	21.8	300	5,362	17.9
Jan., 1921	20	191	9.6	20	295	14.8	10	128	12.8	50	614	12.3
Feb., "	20	158	7.9	20	190	9.5	10	106	10.6	50	454	9.1
Mar., "	20	158	7.9	20	212	10.6	10	106	10.6	50	476	9.5
Apr., "	20	137	6.9	20	209	10.5	10	112	11.2	50	458	9.2
May, "	20	184	9.2	20	213	10.7	10	165	16.5	50	652	11.2
June, "	20	180	9.0	20	250	12.5	10	115	11.5	50	545	10.9
July, "	20	202	10.1	20	237	11.9	10	88	8.8	50	527	10.5

Aug.,	"	20	248	12.4	20	299	15.0	10	103	10.3	50	650	13.0
Sept.,	"	20	294	14.8	20	256	12.8	10	100	10.0	50	650	13.0
Oct.,	"	20	304	15.2	20	373	18.7	10	106	10.6	50	783	15.7
Nov.,	"	20	185	9.3	20	267	13.4	10	136	13.6	50	588	11.8
Dec.,	"	20	186	9.3	20	402	20.2	10	107	10.7	50	695	13.9
Total		240	2,427	10.1	240	3,203	13.3	120	1,372	11.4	600	7,002	11.7
Jan., 1922		20	233	11.7	20	466	23.3	10	90	9.0	50	789	15.8
Feb.,	"	20	208	10.4	20	352	17.6	10	113	11.3	50	673	13.5
Mar.,	"	20	211	10.6	20	374	18.7	10	95	9.5	50	680	13.6
Apr.,	"	20	197	9.9	20	476	23.8	10	169	16.9	50	842	16.8
May,	"	20	153	7.7	20	453	22.7	10	102	10.2	50	708	14.2
June,	"	20	378	18.9	20	468	23.4	10	104	10.4	50	950	19.0
Total		120	1,380	11.5	120	2,589	21.6	60	673	11.2	300	4,642	15.5

Norfolk, Va., Nov. 8th, 1922.

C. E. Reynolds, Car Accountant.

Statement Showing Average Delay Virginian Coal Cars from Mines to Sewalls Point, Delay at Sewalls Point, Delay Sewalls Point to Mines, and Delay from Mines to Sewalls Point and Return, Including Delay at Sewalls Point.

July to December, 1920:

	Days
Avg. delay Mines to Sewalls Point	3 5
“ “ At Sewalls Point	1 8
“ “ Sewalls Point to Mines	2 8
“ “ Mines to Sewalls Point and return (Including Delay at Sewalls Pt.)	8 1

January to December, 1921:

Avg. delay Mines to Sewalls Point	4 5
“ “ At Sewalls Point	3 4
“ “ Sewalls Point to Mines	3 1
“ “ Mines to Sewalls Point and return (Including Delay at Sewalls Pt.)	11 0

January to June, 1922:

Avg. delay Mines to Sewalls Point	3 7
“ “ At Sewalls Point	3 4
“ “ Sewalls Point to Mines	3 3
“ “ Mines to Sewalls Point and return (Including Delay at Sewalls Pt.)	10 5

July, 1920, to June, 1922:

Avg. delay Mines to Sewalls Point	3 0
“ “ At Sewalls Point	4 0
“ “ Sewalls Point to Mines	3 1
“ “ Mines to Sewalls Point and return (Including Delay at Sewalls Pt.)	10 1

C. E. Reynolds, Car Accountant.

Norfolk, Va., November 9th, 1922.

Interstate Commerce Commission. Docket No. 13832.
Date: Nov. 14, 1922. Exhibit No. 27. Witness: Gore.
Stenographer: Chaws. ———, Defdt.

Statement Showing Average Miles per Car per day for Years 1920-1921 and First Nine Months 1922

Coal Cars

	Total coal car mileage	Total coal cars owned	Average off line	Avg. B/O	Total avg. off line and had order	Avg. miles per coal car per day	Avg. miles 100-ton coal car per day	Avg. miles all frt. cars per car per day
1920								
Jan.,	4,716,734	7,310	3,231	134	3,365	3,945	45 22	29 60
Feb.,	4,798,260	7,305	2,383	408	2,791	4,514	36 65	28 90
Mar.,	7,501,096	7,304	3,005	168	3,173	4,131	58 57	41 80
Apr.,	8,467,550	7,304	2,514	230	2,744	4,560	61 90	48 10
May,	5,231,712	7,304	2,538	91	2,629	4,675	36 10	30 20
June,	8,341,892	7,304	2,257	220	2,477	4,827	57 61	47 20
July,	9,509,703	7,304	1,984	129	2,113	5,191	59 09	50 20
Aug.,	9,989,347	7,302	1,874	137	2,011	5,291	60 90	51 20
Sept.,	9,388,885	7,302	1,846	136	1,982	5,320	58 83	48 99
Oct.,	10,109,226	7,302	1,705	80	1,785	5,517	59 11	48 83
Nov.,	8,343,582	7,302	1,697	111	1,808	5,494	50 62	42 23
Dec.,	7,665,661	7,358	1,639	147	1,786	5,572	44 38	35 91
Year,	94,063,648	7,308	2,223	166	2,389	4,919	52 25	41 49
1921								
Jan.,	6,327,481	7,864	1,581	160	1,741	6,123	33 34	26 90
Feb.,	5,256,174	8,274	898	229	1,127	7,147	26 27	22 11
Mar.,	4,476,436	8,294	595	209	804	7,490	19 28	16 89
Apr.,	5,787,337	8,292	491	289	780	7,512	25 68	21 52
May,	8,824,125	8,288	336	467	803	7,485	38 03	30 65
							31 51	

Statement Showing Average Miles per Car per day—Cont'd

	Total coal car mileage	Total coal cars owned	Average off line	Avg. B/O	Total avg. off line and bad order	Avg. on line in service	Avg. miles per coal car per day	Avg. miles 109-ton coal car per day	Avg. miles all frt. cars per car per day
June, 1921	8,064,764	8,287	390	317	707	7,580	35.47	37.22	29.39
July, "	6,098,303	8,278	474	240	714	7,564	26.01	23.88	22.12
Aug., "	5,804,265	8,278	442	262	704	7,574	24.72	16.58	21.21
Sept., "	4,878,269	8,278	556	191	747	7,531	21.59	17.70	18.93
Oct., "	6,185,363	8,278	663	212	875	7,403	26.95	31.24	23.35
Nov., "	6,203,779	8,276	891	203	1,094	7,182	28.79	28.05	24.44
Dec., "	4,033,090	8,270	666	203	869	7,401	17.58	16.74	15.96
Year, "	71,939,386	8,246	665	248	913	7,333	26.88	25.22	22.77
Jan., 1922	5,454,465	8,267	544	381	925	7,342	23.96	26.63	20.63
Feb., "	5,793,681	8,261	742	316	1,058	7,203	28.73	30.80	24.61
Mar., "	8,051,043	8,241	649	416	1,065	7,176	36.19	37.93	30.55
Apr., "	6,077,572	8,231	455	323	778	7,453	27.18	24.60	24.25
May, "	7,801,978	8,231	483	292	775	7,456	33.75	20.99	29.74
June, "	7,900,575	8,215	857	297	1,154	7,061	37.30	34.79	30.90
July, "	6,586,469	8,204	1,395	236	1,631	6,573	32.32	27.28	26.21
Aug., "	5,467,900	8,204	1,657	466	2,123	6,081	29.01	31.26	23.13
Sept., "	5,888,026	8,204	2,044	405	2,449	5,755	34.10	44.34	27.15
Jan. to Sept., Inc., 1922	59,021,709	8,229	981	348	1,329	6,900	31.33	30.00	26.37

NOTE.—Mileage and averages of 109-ton coal cars also included in all coal cars.

Statement Showing Average Number Foreign Coal Cars on Line Years 1920, 1921, and First Nine Months 1922

Jan., 1920	Daily average on line	Jan., 1921	Daily average on line	Jan., 1922	Daily average on line
Feb., "	2,925	Feb., "	222	Feb., "	140
Mar., "	2,243	Mar., "	166	Mar., "	145
Apr., "	1,389	Apr., "	146	Apr., "	155
May, "	595	May, "	173	May, "	162
June, "	460	June, "	174	June, "	173
July, "	361	July, "	166	July, "	169
Aug., "	270	Aug., "	161	Aug., "	149
Sept., "	236	Sept., "	175	Sept., "	136
Oct., "	249	Oct., "	191	Jan. to Sept., 1922, Inc.	133
Nov., "	295	Nov., "	207		151
Dec., "	307	Dec., "	247		
Year "	292	Year "	208		
			186		

Norfolk, Va., Nov. 8th, 1922.

Interstate Commerce Commission, Sheet No. 13832. Date: Nov. 14, 1922. Exhibit No. 28.
Witness, Defdts., Gore. Commissioner Chauz.

C. E. Reynolds, Car Accountant.

[fol. 1238]

EXHIBIT 29

Statement of Time Lost in Operation of Coal Mines at Tams, Wyco, and Hot Coal for Years 1920, 1921, and 1922 (Nine Months), Compiled from Affidavits Filed by Operators of said Mines with Virginian Car Distributors

Wyco lost 15 hrs. in 1920; 502 hrs. in 1921, and so far in 1922—184 hours. "No market."

Tams—a joint mine—O—1920; 489—1921 and so far in 192—184 hours. "No market."

Hot Coal—O—1920; 493 hrs. 1921, and so far in 1922—176 hours. "No market."

Railroad disability account lack of cars shows:

Wyco, 1920	1,010 hours.
1921	95 hours.
1922	452 hours so far.
Tams, 1920	1,007 hours.
1921	11 hours.
1922	345 hours.
Hot Coal, 1920	697 hours.
1921	82 hours.
1922	435 hours.

(Here follows Exhibit 30, witness Goldblatt, marked side folio pages 1239-1264, inc.)

EXHIBIT 30

Witness: Goldblatt. Date: Nov. 14, 1922

The Virginian Railway Co.

I. C. C. Docket 13832

Assignment of Operating Expenses

Cost Study

Recapitulation Expenses—Yard and Road. I. C. C. Docket 13832—Application of Formula

District or yard under review

Winding Gulf Mines to Elmore:

	Total expense of handling coal	Tons of coal handled	Expense per ton of coal handled	Ton miles	Expense per ton of coal one mile
Formula 1A—Maintenance of Way and Structures	\$11,536 78	375,078	\$0 03076	6,361,941	\$0,00181
Formula 2A—Maintenance of Equipment	11,980 50	.....	0 05194	.....	0 00164
Formula 3A—Transportation Expenses	20,633 10	.....	0 05501	.....	0 00324
Formula 4A—General Expenses, Traffic Expenses, and Taxes	6,008 35	.....	0 01602	.....	0 00095
Total Expenses	\$50,158 73	375,078	\$0 13373	6,361,941	\$0 00766

Elmore to Princeton:

Formula 1A—Maintenance of Way and Structures	\$12,085 18	.....	.....	24,347,547	\$0 00050
Formula 2A—Maintenance of Equipment	53,341 47	.....	.....	.....	0 00219
Formula 3A—Transportation Expenses	37,088 99	.....	.....	.....	0 00152
Formula 4A—General Expenses, Traffic Expenses, and Taxes	13,955 10	.....	.....	.....	0 00057
Total Expenses	\$116,470 74	.....	.....	24,347,547	\$0 00478

Elmore Yard:

Formula 1—Maintenance of Way and Structures	\$3,685 20	643,637	\$0 00573	.....	.....
Formula 2—Maintenance of Equipment	1,101 37	.....	0 00171	.....	.....
Formula 3—Transportation Expenses	2,984 72	.....	0 00464	.....	.....
Formula 4—General Expenses, Traffic Expenses, and Taxes	1,057 79	.....	0 00164	.....	.....
Total Expenses	\$8,829 08	643,637	\$0 01372	.....	.....

Princeton Yard:

Formula 1—Maintenance of Way and Structures	\$5,003 20	678,796	\$0 00737	.....	.....
Formula 2—Maintenance of Equipment	6,579 75	.....	0 00969	.....	.....
Formula 3—Transportation Expenses	11,095 95	.....	0 01635	.....	.....
Formula 4—General Expenses, Traffic Expenses, and Taxes	3,086 78	.....	0 00455	.....	.....
Total Expenses	\$25,755 68	678,796	\$0 03796	.....	.....

Expense Per Ton of Coal from Winding Gulf Mines to and Through Princeton Yard:

Winding Gulf Mines to Elmore .....	.....	.....	\$0 13373	.....	.....
Through Elmore Yard .....	.....	.....	0 01372	.....	.....
Elmore to Princeton—Expense per ton mile (\$0.00478) and multiplied by mileage (35 miles) .....	.....	.....	0 16730	.....	.....
Through Princeton Yard .....	.....	.....	0 03796	.....	.....
Total Expenses .....	.....	.....	\$0 35271	.....	.....

Expense Per Ton of Coal from Winding Gulf Mines to and Through Deepwater:

Winding Gulf Mines to Elmore .....	.....	.....	\$0 13373	.....	.....
Through Elmore Yard .....	.....	.....	0 01372	.....	.....
Elmore to Deepwater—Expense per ton mile Elmore to Princeton (\$0.00478) multiplied by mileage (60 miles) .....	.....	.....	0 28680	.....	.....
Through Junction Yard—Expense equal to Princeton Yard .....	.....	.....	0 03796	.....	.....
Total Expenses .....	.....	.....	\$0 47221	.....	.....

The Virginian Railway Company
Assignment of Operating Expenses
Cost Study

Maintenance of Way and Structures—Yard. I. C. C. Docket 13832—Formula Sheet 1

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges (1)	Of New River div. charges (2)	District under review (7)	Freight service (8)	Coal service (9)
201	Superintendence.	After Yard charges to be used for Accts. 202 to 272, inclusive, have been ascertained, determine the percentage proportion of Yard Charges used to total M. of W. & S. expenses, Accounts 202 to 272 inclusive. (See Form 9.) Multiply unallocated System charges by this percentage to produce Yard proportion of expense. Add the product to located Yard Charges.	After Yard charges to be used for Accts. 202 to 272, inclusive, have been ascertained, determine the percentage proportion of Yard Charges used to total M. of W. & S. New River Division Expenses, Accounts 202 to 272, inclusive. (See Form 9.) Multiply unallocated New River Division charges, by this percentage to produce Yard proportion of expense. Add the product to located Yard Charges.	Assign directly as far as possible. Divide the sum of the located and the prorated expense by the number of locomotive hours switching and other service to produce expense per Locomotive hour. (See Form 1 for locomotive hours and Form 9 for located and prorated items.)	Multiply expense per locomotive hour by the number of hours spent in freight switching to produce expense of freight switching. (See Form 1 for Freight Switching locomotive hours.) Divide expense of Freight Switching by total tonnage (weight of loaded cars including lading plus weight of empty cars) handled to produce expense per ton of handling. (See Form 5 for tonnage handled.)	Multiply expense of handling per ton by total tonnage (weight of loaded cars including lading plus weight of empty cars) handled in Coal Service to produce expense of coal service. (See Form 5 for coal tonnage handled.) Divide expense of coal service by number of tons of coal handled thru the Yard to produce the expense of handling per ton of Coal. (See Form 5 for number of tons of coal handled.)
274	Injuries to Persons.					
275	Insurance.					
276	Stationery & Printing.					
277	Other Expenses.					
202	Roadway Maintenance.	Determine the percentage proportion that three times the main line mileage plus the mileage of yard and side tracks for District under Review bear to three times the main line mileage plus mileage of all yard and side tracks for entire system. Multiply unallocated system charges by this percentage. Add result to allocated District under Review expense. (See Form 7 for mileage and Form 9 for M. of W. & S. charges.)	Assign directly as far as possible. Determine the percentage proportion that three times the main line mileage plus the mileage of yard and side tracks of the yard under review bear to three times the mileage of main line plus mileage of yard and side tracks for New River Div. Multiply unallocated New River items by this percentage. Add result to allocated Yard expense. (See Form 7 for mileage and Form 9 for M. of W. & S. charges.)			
208	Bridges and Culverts.					
212	Ties.					
214	Rails.					
216	Other Track Material.					
218	Ballast.					
220	Track Laying, etc.					
221	Right of Way Fences.					
225	Crossings and Signs.					
227	Station and Off. Bldgs.					
229	Roadway Buildings.					
231	Water Stations.					
233	Fuel Stations.					
235	Shops & Engine Houses.					
247	Tel. & Tel. Lines.					
253	Power Plant Buildings.					
255	Power Sub-Station Bldgs.					
257	Power Transmission Sys.					
259	Power Distribution Sys.					
261	Power Line Poles, etc.					
269	Roadway Machines.					
271	Small Tools & Supplies.					
272	Removing Snow, etc.					
203	Roadway Depreciation.	Ascertain the value of facilities located in the Yard under Review, and apply rate now in use to produce depreciation expense. (See Form 6 for values.) Add result to Yard expense.	As explained under "System Charges."			
234	Fuel Stations					
236	Shops & Eng. Hses.					
254	Power Plant Bldg.					

The Virginian Railway Co.

Assignment of Operating Expenses

Cost Study

Maintenance of Way and Structures—Road. I. C. C. Docket 13832—Formula Sheet 1-A

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges (1)	Of New River div. charges (2)	District under review	Freight service	Coal service
201	Superintendence.	System charges assigned to district under review on basis of used M. of W. & S. charges omitting Accounts 201 and 274 to 277, inclusive, to total system charges for like accounts. (Form 9.)	New River Div. charges as signed to district under review on basis of used M. of W. & S. charges omitting Accounts 201 and 274 to 277, inclusive, to total New River Div. charges for like accounts. (Form 9.)			
274	Injuries to Persons.					
275	Insurance.					
276	Stationery & Printing.					
277	Other expenses.					
		(3)	(4)	(7)	(8)	(9)
202	Roadway Maintenance.	Determine the percentage proportion that three times the main line mileage plus the mileage of yard and side tracks for Dist. under review bear to three times the main line mileage plus mileage of all yard and side tracks for entire system.	Assign directly as far as possible.	Assign directly as far as possible. (See Form 9.)	Assign directly as far as possible.	Multiply expense per gross ton mile of freight by gross ton miles (loaded and empty cars and lading) in coal service to produce expense of coal service. (Form 2.)
206	Tunnels & Subways.					
208	Bridges, Trestles, etc.					
212	Ties.					
214	Rails.	Multiply unallocated system charges by this percentage.	Determine the percentage proportion that three times the main line mileage plus the mileage of yard and side tracks of the yard under review bear to three times the mileage of main line plus mileage of yard and side tracks for New River Div.	Determine the percentage proportion that tons of coal furnished as fuel for road locomotives in freight service for New River Div. bear to tons of coal furnished road locomotives as fuel for all services New River Division. (See Form 11.) (I. C. C. Formula.)	Multiply "Common" expense for district under review by percentage of fuel coal issued to freight locomotives in road service New River Div. to produce freight expense. (See Form 11).	Divide expense of coal service by net coal ton miles to produce expense of handling one ton of coal one mile. (See Form 2.)
216	Other Track Materials.					
218	Ballast.					
220	Track Laying, etc.					
221	Right of Way Fence.	Add result to allocated Dist. under review expense. (See Form 12 for mileage and Form 9 for M. of W. & S. charges).	Multiply New River items by this percentage.	Divide expense assigned to freight service by gross ton miles (loaded and empty cars and lading) in freight service to produce expense per gross ton mile of freight. (Form 2).	Divide expense assigned to freight service by gross ton miles (loaded and empty cars and lading) in freight service to produce expense per gross ton mile of freight. (Form 2).	
225	Crossings & Signs.					
227	Sta. & Off. Bldg. Repairs.					
229	Roadway Buildings.					
231	Water Stations.	Add result to allocated yard expense. (See Form 12 for mileage and Form 9 for M. of W. & S. charges.)	Add result to allocated yard expense. (See Form 12 for mileage and Form 9 for M. of W. & S. charges.)			
235	Shops and enginehouses.					
247	Tel. & Tel. Lines.					
253	Power Plant Bldgs.					
255	Power Substation Bldgs.					
269	Roadway Machines.					
271	Small Tools & Supplies.					
272	Removing Snow, etc.					
		(5)	(6)			
203	Roadway Depreciation.	Ascertain value of facilities located in the District under review and apply rate now in use to produce expense for District under review. (Form 6)	Assigned to District Under Review as explained under "System Charges."			
209	Bridges, etc. "					

The Virginian Railway Co.
Assignment of Operating Expenses
Cost Study

Maintenance of Equipment—Yard. I. C. C. Docket 13832—Formula Sheet 2

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges (1)	Of New River charges (2)	District under review (5)	Freight service (6)	Coal service (7)
301	Superintendence.	Determine the percentage	Assign directly as far as			
302	Shop Machinery.	proportion that New River	possible.			
303	Shop Machinery Deprecia- tion.	Division allocated charges	Determine the percentage			
304	Power Plant Machinery.	for these accounts bear to	proportion that Yard			
305	Power Plant Machinery- Depreciation.	the sum of allocated New	Switching Locomotive			
308	Steam Locomotives-Re- pairs.	River and Norfolk Division	miles for Yard under Re- view bear to total Loco- motive miles, New River	Assign directly as far as	Assign directly as far as	Multiply expense of han- dling per ton of freight
309	Steam Locomotives-Depre- ciation.	charges.	Division. (See Form 1	possible.	possible.	by the gross coal tonnage
332	Injuries to Persons.	Multiply unallocated System	for Yard Locomotive	Determine percentage pro- portion that freight	Divide expense of freight	(Loaded and Empty Cars
333	Insurance.	charges by this percentage.	Miles and Form 10 for	switching hours for yard	switching by gross ton- nage (Empty and Loaded	plus lading) handled thru
334	Stationery & Printing.	Add the product to allocated	New River Division Lo- comotive Miles.)	under review bear to total	car plus lading) handled	Yard under Review to
335	Other Expenses	New River Division charges. (See Form 12).		switching hours, for yard	thru Yard under review	produce cost of switching
326	Work Equipment Repairs.		Apply this percentage to	under review.	to produce expense of	Coal Service.
327	Work Equipment Depre- ciation.		located and prorated	Multiply "common" a l- located and prorated ex- pense by this percentage.	handling per gross ton of freight.	Divide cost of coal switch- ing by the number of tons
			New River Division	Add result to allocated	(See Form 5 for ton- nage handled.)	of coal handled thru
			charges to produce Yard	freight expense. (See		Yard under Review to
			Expense.	Form 2 for Switching		produce expense of han- dling per ton of coal.
			Add result to located Yard	Locomotive hours and		(See Form 5 for tonnage
			expense.	Form 12 for Maintenance of Equipment Expense.)		handled).
		(3)	(4)			
		Determine the percentage	Assign directly as far as			
		proportion that three times	possible.			
		the main line mileage plus	Determine the percentage			
		the mileage of yard and side	proportion that three			
		tracks for New River Divi- sion bear to three times the	times the main line mile- age plus the mileage of			
		main line mileage plus mile- age of all yard and side	yard and side tracks of			
		tracks for entire system.	the yard under review			
		Multiply unallocated system	bear to three times the			
		charges by this percentage.	mileage of main line plus			
		Add result to allocated New	mileage of Yard and Side			
		River Division expense.	tracks for New River			
		See Form 7 for mileage	Divison.			
		and Form 12 for Mainte- nance of Equipment Ex- pense.)	Multiply located and pro- rated items by this per- centage.			
			Add result to allocated yard			
			expense. (See Form 7			
			for mileage and Form 12			
			for Maintenance of			
			Equipment Expense.)			

The Virginian Railway Co.
Assignment of Operating Expenses

Maintenance of Equipment—Road. I. C. C. Docket 13832—Formula Sheet 2-A

Cost Study

Basis of Assignment and Development of Unit Expenses

Maintenance of Equipment—Road

Account No.	Name	Of system charges (1)	Of New River div. charges (2)	District under review (3)	Freight service (12)	Coal service (13)
301	Superintendence.	Same as Accounts 302 to 310, inclusive.	Same as Accounts 302 to 310, inclusive.	Determine the percentage proportion that freight expense used for Accts. 302 to 310, inclusive, and 314, 315, 316, 326, and 327 bears to total expense for New River Div. omitting a/c 301, 329 to 337. Multiply New River Div. "common" expense by this proportion to produce expense assignable to freight. (See Form 12.)		
332	Injuries to Persons.					
333	Insurance.					
334	Stationery and Printing.					
335	Other expenses.					
		(4)	(5)			
302	Shop Machinery.	Determine the percentage proportion that allocated New River Div. expense bears to the sum allocated Norfolk and New River River Divisions charges. (See Form 12.)	Determine percentage proportion that locomotive ton miles for district under review bear to locomotive ton miles New River Div. (Form 3). Multiply New River Division charges by this percentage to produce expense for district under review. Add result to district under review.	Assign directly as far as possible. Determine percentage proportion that road locomotive ton miles in freight service district under review bear to total locomotive ton miles same territory. (See Form 3.) Multiply "common" expense by this percentage to produce freight expense. Add result to freight service.	Assign directly as far as possible. Divide expense assigned to freight service by gross ton miles (loaded and empty cars and lading) in freight service to produce expense per gross ton mile of freight. (See Form 2.)	Multiply expense per gross ton mile of freight by gross ton miles (loaded and empty cars and lading) in coal service to produce expense of coal service. Divide expense of coal service by net coal ton miles to produce expense of handling one ton of coal one mile. (See Form 2.)
303	Shop Machinery—Depr.					
304	Power Plant Machinery.					
305	Power Plant Machinery—Depreciation.					
308	Steam Locomotives.					
309	Steam Locomotives—Depr.	Apply this percentage to unallocated system charges and add the product to New River Division charges.		(8)		
310	Steam Locomotives—Retirements.					
		(6)	(7)			
326	Work Equipment—Reprs.	Determine the ratio that three times main line mileage plus mileage of yard and side tracks for district under review bears to main line mileage multiplied by three plus yard and side tracks for entire system. Multiply system charges by this percentage and add result to district charges.	Determine the ratio that three times main line mileage plus mileage of yard and side tracks for district under review bears to main line mileage multiplied by three plus yard and side tracks for New River Div.			
327	Work Equipment—Depr.					
		(9)	(10)	(11)		
314	Freight Train Cars—Repairs.	Divide total of accounts 314, 315 and 316 by the total gross freight ton miles, excluding engines and tenders, to produce expense per gross freight ton-mile. (I. C. C. 0.3.) Multiply expense per gross freight ton-mile by gross ton miles freight service district under review to produce freight expense. Add result to freight expense. (See Form 2)	Allocated directly freight service.	Allocated directly to freight service.		
315	Freight Train Cars—Depreciation.					
316	Freight Train Cars—Retirements.					

The Virginian Railway Co.

Assignment of Operating Expenses

Transportation Expenses—Yard. I. C. C. Docket 13832—Formula Sheet 3

Cost Study

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges (1)	Of New River div. charges (2)	District under review (3)	Freight service (7)	Coal service (8)
371	Superintendence.	Unallocated system charges assigned to New River Div. in ratio that allocated New River Division charges bear to sum of Norfolk and New River Divisions allocated charges. (See Form 13 for charges and ratio.)	Assigns directly as far as possible. Determine percentage proportion that charges used for District under review for Accts. 377 to 389, inclusive, bear to total transportation charges for New River Div. exclusive of 'accts. 372, 373, 376, 407, 410 to 417, and 420. Multiply unallocated New River Div. charges by this percentage to produce expense for Yard under Review. Add product to Yard under Review. (See Form 13.)	Assign directly as far as possible. Determine percentage proportion that expense used in freight service for Accts. 377 to 389 bear to total expense used for same Accounts for Yard under Review. Multiply "common" expenses by this percentage to produce expense assignable to freight service. Add result to freight expense. (See Form 13.)		
410	Stationery and Printing.					
411	Other Expenses.					
414	Insurance.					
377	Yardmasters and Yard Clerks.	Determine the percentage proportion that switching miles for yard under review bear to total Yard switching miles for system. Multiply total system charges for Accounts not directly assignable to Yard under review by this percentage to produce expense for Yard under review. (See Form 1 for switching miles Yard under review and Form 12 for Transportation charges and total Yard switching miles.)	Allocated directly to District under review.	Assign directly as far as possible. Divide expense for these accounts by total number of Yard locomotive hours to produce expense per locomotive hour. Multiply expense per yard locomotive hour by the number of hours spent in freight switching to produce expense of freight switching. (See Form 1 for locomotive hours.)	Divide expense of freight switching by gross tonnage of freight handled through yard to produce expense of switching per gross ton. (See Form 5 for tonnage handled.) Gross tonnage includes loaded and empty cars and lading.	Multiply expense of switching per gross ton by the gross coal tonnage handled thru Yard to produce cost of coal switching. Divide cost of coal switching by number of tons of coal handled thru yard to produce expense of handling one ton of coal. (See Form 5 for tonnage handled.)
378	Yard Conductors and Brakemen.					
379	Yard Switch and Signal tenders.					
380	Yard Engineer.					
382	Fuel for Yard Locomotive.					
385	Water for Yard Locomotives.					
386	Lubricants for Yard Locomotives.					
387	Other Supplies for Yard Locomotives.					
388	Enginehouse expenses—Yard.					
389	Yard Supplies and expenses.					

The Virginian Railway Co.

Assignment of Operating Expenses

Transportation Expense—Road. I. C. C. Docket 13832—Formula Sheet 3A

Cost Study

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges	Of New River div. charges	District under review	Freight service	Coal service
		(1)	(2)	(3)		
371	Superintendence.	Unallocated system charges assigned to New River Div. in ratio that allocated New River Division charges bear to the sum of allocated Norfolk Division and New River Division charges. (See Form 13 for charges and ratio.)	Assign directly as far as possible.	Assign directly as far as possible.		
376	Station supplies and expenses.		Determine percentage proportion that charges used for district under review for accts. 372, 373, 392, 394, 397 to 402, bear to total transportation charges for New River Div. exclusive of accts. 371, 373, 376, 407, 410 to 417, and 420.	Determine percentage proportion that expense used in freight service for Accts. 372, 373, 392, 394, 397, 402, bear to total expense used for same accts. for district under review.		
407	Tel. & Tel. operation.		Multiply located and prorated New River Div. charges by this percentage to produce expense for district under review.	Multiply "common" expenses by this percentage to produce expense assignable to freight service.		
410	Stationary and printing.		Add product to district under review. (See Form 13.)	Add result to freight expense. (See Form 13.)	(10)	(11)
411	Other expenses.				Assign directly as far as possible.	Multiply expense per gross ton mile freight by gross ton miles (including empty and loaded cars and lading) in coal service to produce expense of coal service.
414	Insurance.				Divide expense assigned to freight service by gross ton miles (including empty and loaded cars and lading) of freight. (See Form 2.)	Divide expense of coal service by net ton miles of coal handled to produce expense per ton mile for handling one ton of coal one mile. (See Form 2.)
415	Clearing wrecks.					
416	Damage to property.					
417	Damage to live stock.					
418	Loss and damage—Frt.					
420	Injuries to persons.					
		(4)	(5)	(6)		
392	Train enginemen.	Unallocated system charges assigned to New River Div. in ratio that allocated New River Div. charges bear to sum of allocated Norfolk and New River Div. charges. (Form—13.)	Assign directly as far as possible.	Assign directly as far as possible.		
394	Fuel for locomotives in road service.		Determine the percentage proportion that loco. miles in road service for district under review bear to total road loco. miles for New River Div. Form 10.	Determine percentage proportion that freight loco. miles in road service bear to total loco. miles road service for district under review. Form 10.		
397	Water for locomotives.		Multiply New River Div. expense by this percentage to produce expense for district under review.	Multiply "common" expenses by this percentage to produce expense assignable to freight service.		
398	Lubricants for locomotives.		Add product to district under review.	Add product to freight service.		
399	Other supplies for locomotives.					
400	Enginehouse expense.					
		(7)	(8)	(9)		
372	Dispatching trains.	Unallocated system charges assigned to New River Div. in ratio that allocated New River Div. charges bear to the sum of allocated Norfolk and New River charges. (Form 13.)	Assign directly as far as possible.	Assign directly as far as possible.		
373	Station employees.		Determine percentage proportion that train miles for the district under review bear to train miles New River Div. (Form 10.)	Determine percentage proportion that freight train miles for district under review bear to total train miles for district under review. (Form 10.)		
374	Weighing & Inspection.		Multiply New River Div. charges by this percentage to produce expense for district under review.	Multiply "common" expenses by this percentage to produce expense assignable to freight service.		
401	Trainmen.		Add result to district under review.	Add result to freight expense.		
402	Train supplies, etc.					

[fol. 1247]

The Virginian Railway Co.

Assignment of Operating Expenses

Traffic and General Expenses and Taxes—Yard. I. C. C. Docket 13832—Formula Sheet 4

Cost Study

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges	Of New River div. charges	District under review	Freight service	Coal service
	Traffic Expenses:	(1)	(2)	(3)	(4)	(5)
351	Superintendence.	Allocated directly to	Allocated directly to	Allocated directly to	Allocated directly to	Determine the percentage
352	Outside Agencies.	Service.	Service.	Service.	Service.	proportion that expense
353	Advertising.					assignable to Coal Service
354	Traffic Associations.					for Maintenance of
357	Insurance.					Way and Structures
358	Stationery & Printing.					Maintenance of Equipment,
359	Other Expenses.					and Transportation Expenses bears
	General Expenses:					total expenses excluding
451	Salaries and Expenses of General Officers.					Traffic and General Expenses.
452	Salaries and Expenses of Clerks and Attendants.					Multiply total Traffic and
453	General Office Supplies and Expenses.					General Expenses by the
454	Law Expenses.					percentage to produce
455	Insurance.					expense assignable to
458	Stationery & Printing.					Coal Service.
459	Valuation Expenses.					Divide the expense
460	Other Expenses.					assigned by the net ton
	Taxes:					of coal handled through
532	Taxes.					yard to produce expense
						of handling per ton of
						coal.

The Virginian Railway Co.

Assignment of Operating Expenses

Traffic and General Expenses and Taxes—Road. I. C. C. 13832—Formula Sheet 4A

Cost Study

Basis of Assignment and Development of Unit Expenses

Name	Of system charges	Of New River div. charges	District under review	Freight service	Coal service
	(1)	(2)	(3)	(4)	(5)
Traffic Expenses:					
61 Superintendence.	Allocated directly to Coal	Allocated directly to Coal	Allocated directly to Coal	Allocated directly to Coal	Determine the percentage proportion that expense assignable to Coal Service for Maintenance of Way and Structures, Maintenance of Equipment and Transportation Expenses bears to total expenses, excluding Traffic and General Expenses.
62 Outside Agencies.	Service.	Service.	Service.	Service.	
63 Advertising.					
64 Traffic Associations.					
65 Insurance.					
66 Stationery & Printing.					
67 Other Expenses.					
General Expenses:					
61 Salaries and Expenses of General Officers.					Multiply total Traffic and General Expenses by this percentage to produce expense assignable to Coal Service.
62 Salaries and Expenses of Clerks and Attendants.					
63 General Office Supplies and Expenses.					
64 Law Expenses.					
65 Insurance.					
66 Stationery & Printing.					
67 Valuation Expenses.					Divide expense so assigned by the net ton miles of coal handled to produce expense of handling one ton of coal one mile.
68 Other Expenses.					
Taxes:					
Taxes.					

The Virginian Railway Company

Assignment of Operating Expenses

Maintenance of Way and Structures—Elmore Yard. I. C. C. Docket 13832. Application of Formula Sheet 1

Cost Study

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges 1	Of New River div. charges 2	District under review 3	Freight service 4	Coal service 5
201	Superintendence.	1a—Average monthly charges to be prorated Form 9, Page 468 \$7,253.96.	2a—Average monthly charges to be prorated Form 9, Page 467 \$1,641.09.	\$3,362.96	None	None
274	Injuries to Persons.	1b—Charges used A/c 202-272 Elmore Yd. Form 9, Page 473 (7e) \$3,823.81.	2b—Charges used A/c 202-272 Elmore Yd. Form 9, Page 473 (7e) \$3,823.81.	\$203.49	\$13,872.68	\$0.003346
275	Insurance.	1c—Average monthly charges total M. of W. & S. Form 9, Page 473 \$195,655.82.	2c—Average monthly charges total N. R. Div. Form 9, Page 473 \$84,641.32.	\$72.09	293.70	1,101.374
276	Stationery & Printing.	1d—b ÷ c Ratio used to total charges Form 9 Page 473 .01954.	2d—b ÷ c Ratio of used to total charges .04518.	\$185.27	\$4,074.41	\$3,685.20
277	Other Expenses.	1e—a x d Prorated expense Form 9, Page 372 \$141.74.	2e—a x d prorated expense Form 9, Page 472 \$74.14.	\$3,823.81	\$4,074.41	\$3,685.20
				\$64.82	1,217,701	643,637
				\$141.74	\$0.003346	\$0.005726
				\$4,104.51		
				295.87		
				\$13,872.68		
202	Roadway Maintenance.	3a—Charges to be prorated Form 9, Page 468 \$5,069.99.	4a—Charges to be prorated Form 9, Page 467 \$7,293.65.			
208	Bridges and Culverts.	3b—3 times Main Line plus yard and side track mileage Elmore Yd. Form 7, Page 412 \$26.50.	4b—3 times main line plus yard and side track mileage Elmore Yd. Form 7, Page 412 \$26.50			
212	Ties.	3c—3 times Main Line plus yard and side track mileage System Form 7, Page 412 1,863.18.	4c—3 times main line plus yard and side track mileage N. R. Div. Form 7, Page 412 \$949.50.			
214	Rails.	3d—b ÷ c Ratio Yard to System .01422	4d—b ÷ c Ratio yard to N. R. Div. Form 7, Page 412 .02790.			
216	Other Track Materials.	3e—a x d Prorated expense Form 9, Page 472 \$72.09.	4e—a x d Prorated expense Form 9, Page 477 \$203.49.			
218	Ballast.					
220	Track Laying, etc.					
221	Right of Way Fences.					
225	Crossings and Signs.					
227	Station & Off. Bldgs.					
229	Roadway Buildings.					
231	Water Stations.					
233	Fuel Stations.					
235	Shops & Engine Houses.					
247	Tel. & Tel. Lines.					
253	Power Plant Buildings.					
255	Power Substation Bldgs.					
257	Power Transmission Sys.					
259	Power Distribution Sys.					
261	Power Line Poles, etc.					
269	Roadway Machines.					
271	Small Tools & Supplies.					
272	Removing Snow, etc.					
203	Roadway Depreciation.	5a—Value of facilities Elmore Yd. Form 6, Page 411 \$354,351.00.	Blank			
234	Fuel Stations “					
236	Shops & Eng. Hses. “					
254	Power Plant Bldg. “	5b—Various values included above multiplied by respective rates and divided by 12. Depreciation expense, Form 9, Page 459 \$185.27.				

7a—Assigned directly Form 9, Page 472
7b—Prorated New River Div. charges Form 9, Page 472 (4e)
7c—Prorated System charges Form 9, Page 472 (3e)
7d—Depreciation Expense Form 9, Page 472 (5b)
7e—a plus b plus c plus d Total used Elmore Yd. Accts. 202 to 272
7f—Assigned directly Acct. 201, Form 9, Page 472
7g—Prorated System expense accounts 201 and 274 to 277 Form 9, Page 472 (1e)
7h—Prorated New River Div. expense Accts. 201 and 274 to 277 Form 9 Page 472 (2e)
7i—e plus f plus g plus h Total M. of W. & S. Charges
7j—Locomotive switching hours, Elmore Yard all services Form 1 Page 4
7k—i divided by j Expense per switching hour

8a—Charges assigned directly
8b—Expense per locomotive switching hour Elmore Yd. (7k)
8c—Freight switching hours Elmore Yard, Form 1, Page 4
8d—b multiplied by a Prorated freight switching expense Elmore Yd.
8e—a plus d Total Freight switching expense Elmore Yd.
8f—Gross tonnage of all freight through Elmore Yd. Form 5, Page 345
8g—e divided by f Expense per ton of freight handled through Elmore Yd.

9a—Assigned directly
9b—Expense per ton for freight handled through Elmore Yard (8g)
9c—Gross tonnage handled through Elmore Yd. in coal service Form 5, Page 345
9d—b multiplied by — Expense of coal service, Prorated, Elmore Yd.
9e—a plus d total expense of coal service Elmore Yard
9f—Net tons of coal handled through Elmore Yard, Form 5, Page 345
9g—e divided by f Expense per ton of coal handled through Elmore Yard

The Virginian Railway Company

Assignment of Operating Expenses

Maintenance of Way and Structures—Princeton Yard. I. C. C. Docket 13832. Application of Formula Sheet 1

Basis of Assignment and Development of Unit Expenses

Cost Study

Account No.	Name	Of system charges	Of New River charges	District under review	Freight service	Coal service
		1	2			
201	Superintendence.	1a—Average monthly charges to be prorated Form 9, Page 468 \$7,253.96.	2a—Average monthly charges to be prorated Form 9, Page 467 \$1,641.09.	\$4,704 09	None	None
274	Injuries to Persons.			\$310 20	\$5,442.90	\$0 00424
275	Insurance.			\$109 92	1,000 25	1,179,166
276	Stationery & Printing.	1b—Charges used A/c 202-272 Pctn. Yd. Form 9, Page 473 (7e) \$5,991.79.	2b—Charges used A/c 202-272 Pctn. Yd. Form 9, Page 473 (7e) \$5,991.79.	\$867 58	\$5,444 26	\$5,003 20
277	Other Expenses.	1c—Average monthly charges total M. of W. & S. Form 9, Page 473 \$195,655.82.	2c—Average monthly charges total N. R. Div. Form 9, Page 473 \$84,641.32.	\$5,991 79	\$5,444 26	\$5,003 20
		1b—b ÷ c Ratio used to total charges Form 9, Page 473 .03062.	2d—b ÷ c Ratio of used to total charges .07079.	\$44 88	1,282,999	678,798
		1c—a × d Expense prorated to Pctn. Yd. Form 9, Page 471 \$222.12.	2e—a × d Prorated expense Form 9, Page 471 \$116.17.	\$222 12	\$0 00424	\$0 00737
				\$116 17		
				\$6,374 96		
				1,171 25		
				\$5 44290		
202	Roadway Maintenance.	3a—Charges to be prorated Form 9, Page 468 \$5,069 99.	4a—Charges to be prorated Form 9, Page 467 \$7,293.65.			
208	Bridges and Culverts.	3b—3 times Main Line plus yard and side track mileage Pctn. Yd. Form 7, Page 412 40.39.	4b—3 times main line plus yard and side track mileage Pctn. Yd. Form 7, Page 412 40.39.			
212	Ties.	3c—3 times Main Line plus yard and side track mileage System Form 7, Page 412 1,863.18.	4c—3 times main line plus yard and side track mileage N. R. Div. Form 7, Page 412 949.50.			
214	Rails.	3d—b ÷ c Ratio Yard to System .02168.	4d—b ÷ c Ratio yard to N. R. Div. Form 7, Page 412 .04253.			
216	Other Track Materials.	3e—a × d Prorated expense Form 9, Page 471 \$109.92.	4e—a × d Prorated expense Form 9, Page 471 \$310.20.			
218	Ballast.					
220	Track Laying, etc.					
221	Right of Way Fences.					
225	Crossings and Signs.					
227	Station & Off. Bldgs.					
229	Roadway Buildings.					
231	Water Stations.					
233	Fuel Stations.					
235	Shops & Engine Houses.					
247	Tel. & Tel. Lines.					
253	Power Plant Buildings.					
255	Power Substation Bldgs.					
257	Power Transmission Sys.					
259	Power Distribution Sys.					
261	Power Line Poles, etc.					
269	Roadway Machines.					
271	Small Tools & Supplies.					
272	Removing Snow, etc.					
233	Roadway Depreciation.	5a—Value of facilities Pctn. Yd. Form 6, Page 411 \$832,062.00.	Blank			
234	Fuel Stations “					
236	Shops & Eng. Hses. “					
254	Power Plant Bldg. “	5b—Various values included above multiplied by respective rates and divided by 12 Form 9, Page 459 \$867.58.				

7a—Assigned directly Form 9, Page 471
7b—Prorated New River Div. Charges Form 9, Page 471 (4e)
7c—Prorated System charges Form 9, Page 471 (3e)
7d—Depreciation Expense Form 9, Page 471 (5b)
7e—a plus b plus c plus d. Total used Pctn. Yard Accts. 202 to 272
7f—Assigned directly Acct. 201, Form 9, Page 471
7g—Prorated System expense accounts 201 and 274 to 277 Form 9, Page 471 (1e)
7h—Prorated New River Div. expense Accts. 201 and 274 to 277 Form 9, Page 471 (2e)
7i—e plus f plus g plus h. Total M. of W. & S. Charges
7j—Locomotive switching hours Princeton Yard all services Form 1, Page 4
7k—i divided by j. Expense per switching hour

8a—Charges assigned directly
8b—Expense per locomotive switching hour Pctn. Yd. (7k)
8c—Freight switching hours Princeton Yard, Form 1, Page 4
8d—b multiplied by c Prorated freight switching expense Pctn. Yd.
8e—a plus d—Total Freight switching expense Pctn. Yd.
8f—Gross tonnage of all freight through Pctn. Yd. Form 5, Page 410
8g—e divided by f Expense per ton of freight handled through Princeton Yd.

9a—Assigned directly
9b—Expense per ton for freight handled through Princeton Yard (8g)
9c—Gross tonnage handled through Pctn. Yd. in coal service Form 5, Page 410
9d—b multiplied by c Expense of coal service, Prorated, Pctn. Yd.
9e—a plus d Total expense of coal service Princeton Yard
9f—Net tons of coal handled through Princeton Yard, Form 5, Page 410
9g—e divided by f Expense per ton of coal handled through Princeton Yard

The Virginian Railway Company

Assignment of Operating Expenses

Maintenance of Way and Structures—Road—Winding Gulf Mines to Elmore. I. C. C. Docket 13832—Application of Formula Sheet 1-A

Cost Study

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges (1)	Of New River chgs. (2)	District under review 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000	Freight service 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000	Coal service 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073 1074 1075 1076 1077 1078 1079 1080 1081 1082 1083 1084 1085 1086 1087 1088 1089 1090 1091 1092 1093 1094 1095 1096 1097 1098 1099 1100 1101 1102 1103 1104 1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116 1117 1118 1119 1120 1121 1122 1123 1124 1125 1126 1127 1128 1129 1130 1131 1132 1133 1134 1135 1136 1137 1138 1139 1140 1141 1142 1143 1144 1145 1146 1147 1148 1149 1150 1151 1152 1153 1154 1155 1156 1157 1158 1159 1160 1161 1162 1163 1164 1165 1166 1167 1168 1169 1170 1171 1172 1173 1174 1175 1176 1177 1178 1179 1180 1181 1182 1183 1184 1185 1186 1187 1188 1189 1190 1191 1192 1193 1194 1195 1196 1197 1198 1199 1200 1201 1202 1203 1204 1205 1206 1207 1208 1209 1210 1211 1212 1213 1214 1215 1216 1217 1218 1219 1220 1221 1222 1223 1224 1225 1226 1227 1228 1229 1230 1231 1232 1233 1234 1235 1236 1237 1238 1239 1240 1241 1242 1243 1244 1245 1246 1247 1248 1249 1250 1251 1252 1253 1254 1255 1256 1257 1258 1259 1260 1261 1262 1263 1264 1265 1266 1267 1268 1269 1270 1271 1272 1273 1274 1275 1276 1277 1278 1279 1280 1281 1282 1283 1284 1285 1286 1287 1288 1289 1290 1291 1292 1293 1294 1295 1296 1297 1298 1299 1300 1301 1302 1303 1304 1305 1306 1307 1308 1309 1310 1311 1312 1313 1314 1315 1316 1317 1318 1319 1320 1321 1322 1323 1324 1325 1326 1327 1328 1329 1330 1331 1332 1333 1334 1335 1336 1337 1338 1339 1340 1341 1342 1343 1344 1345 1346 1347 1348 1349 1350 1351 1352 1353 1354 1355 1356 1357 1358 1359 1360 1361 1362 1363 1364 1365 1366 1367 1368 1369 1370 1371 1372 1373 1374 1375 1376 1377 1378 1379 1380 1381 1382 1383 1384 1385 1386 1387 1388 1389 1390 1391 1392 1393 1394 1395 1396 1397 1398 1399 1400 1401 1402 1403 1404 1405 1406 1407 1408 1409
-------------	------	--------------------------	---------------------------	---	---	--

Assignment of Operating Expenses

Maintenance of Way and Structures—Road—Elmore to Princeton. I. C. C. Docket 13832—Application of Formula Sheet 1-A

Cost Study

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges (1)	Of New River division charge (2)	District under service	Freight service	Coal service
201	Superintendence.	1a—Average monthly charges to be prorated Form 9 Page 468 \$7,253.96.	2a—A v e r a g e m o n t h l y charges to be prorated Form 9, Page 467 \$1,-641.09.	\$10,268.93	\$14,652.95	\$0 00029
274	Injuries to Persons.			1,079.51	92049	1,673,027
275	Insurance.			370.05	13,486.58	12,085.18
276	Stationery & Printing.	1b—Charges used A/c 202-272 Elmore to Pctn. Form 9, Page 469 (7e) \$13,782.02.	2b—Charges used A/c 202-272 Elmore to Princeton, Form 9 Page 469 (7e) \$13,782.02.	2,063.52	13,486.58	24,347.547
277	Other expenses.	1c—Average monthly charges total M. of W. & S. A/c 202-272, Form 9, Page 473 \$195,-655.82.	2c—A v e r a g e m o n t h l y charges total N. R. Div. Form 9, Page 473 \$84,-641.32.	13,782.02	5,719.559	0 00050
		1d— $b \div c$ Ratio of used to total charges Form 9, Page 473 .07044.	2d— $b \div c$ Ratio of used to total charges Form 9, Page 473 0.16283.	92.74	0 00029	
		1e—a x d Expense prorated Elmore to Princeton, Form 9, Page 469 \$510.97.	2e—a x d Expense prorated Elmore to Princeton Form 9 Page 469 \$267.22.	510.97		
				267.22		
				14,652.95		
				32,135		
				34,914		
				92040		
202	Roadway Maintenance.	3a—Charges to be prorated Form 9, Page 468 \$4,943.25.	4a—Charges to be prorated Form 9 Page 467 \$7,-348.61.			
206	Tunnels & Subways.	3b—3 times Main Line plus yard and side track mileage —Elmore to Pctn. Form 7 Page 412. \$139.47.	4b—3 times main line plus yard and side track mileage Elmore to Pctn. Form 7 Page 412 139.4-			
208	Bridges, Trestles, etc.	3c—3 times Main Line plus yard and side track mileage System Form 7 Page 412 1,863.18.	4c—3 times main line plus yard and side track mileage N. R. Div. Form 7, Page 412 -949.50.			
212	Ties.	3d— $b \div c$ Ratio Elmore to Pctn. to System Form 7, Page 412 .07486.	4d— $b \div c$ Ratio Elmore to Pctn. to N. R. Div. Form 7, Page 412 .1469.			
214	Rails.	3e—a x d Expense prorated Elmore to Pctn. Form 9 Page 469 \$370.05.	4e—a x d Expense prorated Elmore to Pctn. Form 9, Page 469 \$1,079.51.			
216	Other Track Materials.					
218	Ballast.					
220	Track Laying, etc.					
221	Right of Way Fence.					
225	Crossings & Signs.					
227	Sta. & Off. Bldg. Repairs.					
229	Roadway Buildings.					
231	Water Stations.					
235	Shops and enginehouses.					
247	Tel. & Tel. Lines.					
253	Power Plant Bldgs.					
255	Power Substation Bldgs.					
269	Roadway Machines.					
271	Small Tools & Supplies.					
272	Removing Snow, etc.					
203	Roadway Depreciation.	5a—Value of facilities Elmore to Pten. Form 6 Page 411 \$3,293,883.00.	Blank			
209	Bridges, etc. "	5b—Various values included above multiplied by respective rates and divided by 12 Depreciation expense, Form 9 Page 459 \$2,063.52.				

The Virginian Railway Co.
Assignment of Operating Expenses
Cost Study.

[fol. 1253]

Maintenance of Equipment—Elmore Yard. I. C. C. Docket 13832—Application of Formula Sheet.

Basis of Assignment and Development of Unit Expenses.

Account No.	Name	Of system charges	Of New River division charges	District under review	Freight service	Coal service
301	Superintendence.					
302	Shop Machinery.					
303	Shop Machinery—Depreciation.					
304	Power Plant Machinery.					
305	Power Plant Machinery—Depreciation.					
308	Steam Locomotives—Repairs.					
309	Steam Locomotives—Depreciation.					
332	Injuries to Persons.					
333	Insurance.					
334	Stationery & Printing.					
335	Other Expenses.					
	(1)					
	1a—Charges to be prorated Form 12, Page 514	\$2,112.96	\$21,301.20	\$8.69	\$352.77	\$0.00100
	1b—Allocated New River Div. charge A/c 302, 304, 308, 314, 326, Form 12, Page 514				\$65.25	1,101.374
	1c—Allocated Norfolk and New River Div. charges A/c 302, 304, 308, 314, 326, Form 12, Page 514				\$418.02	\$1,101.37
	1d—b ÷ c ratio New River Div. to total allocated charge Form 12, Page 514				393.70	643.638
	1e—a x d prorated System Expense to New River Div.		\$1,382.72		295.87	\$0.00171
	(2)					
	2a—Allocated New River Div. Charges Form 12, Page 514..		\$68,388.68		\$8.69	\$0.00100
	2b—Prorated System charges (1e)		\$1,382.72			1,101.374
	2c—a plus b charges to be prorated		\$69,771.40			\$1,101.37
	2d—Yard Switching Locomotive miles Elmore Yard Form 1 Page 4					643.638
	2e—Total Locomotive miles New River Division Form 10, page 440					\$0.00171
	2f—d ÷ e Ratio Yard to total locomotive miles					
	2g—e x f Prorated New River Div. charges to Elmore Yard					
	(5)					
	5a—Allocated Elmore Yard charges Form 12, Page 514					
	5b—Prorated New River Div. charges omitting Accts. 326-327 (2g)					
	5c—Prorated New River Div. charges for Accounts 326-327 (4g)					
	5d—b plus c Charges to be assigned to Freight Service					
	5e—Freight Switching Locomotive Hours Elmore Yard Form 1, Page 4					
	5f—Total Switching Locomotive hours Elmore Form 1, Page 4					
	5g—e ÷ f Ratio freight to total switching hours					
	5h—d x g Common expense prorated					
	(6)					
	6a—Allocated freight expense direct to Elmore Yard (5a)					
	6b—Prorated Freight items to Elmore Yard (2g)					
	6c—Prorated Common items to Elmore Yard (5b)					
	6d—a plus b plus c. Total freight expense Elmore Yard					
	6e—Gross tonnage through Elmore Yard Form 5, Page 345					
	6f—d ÷ e Expense per Gross Ton					
	(7)					
	7a—Expense per Gross Ton freight service (6f)					
	7b—Gross tons through Elmore Yard Coal Service Form 5, Page 345					
	7c—a x b expense of coal switching					
	7d—Net tons of coal through Elmore Yard Form 5, Page 345					
	7e—e ÷ d expense per ton of coal					
326	Work Equipment Repairs.					
327	Work Equipment Depreciation.					
	(3)					
	3a—Charges to be prorated Form 12, Page 514	\$2,141.38	\$1,247.47			
	3b—3 times Main Line plus Yard and Side Track mileage New River Div. Form 7, Page 412	949.50	\$1,091.27			
	3c—3 times Main Line plus Yard and Side Track mileage System Form 7, Page 412	1,893.18	\$2,238.74			
	3d—b ÷ c Ratio New River Div. to System Form 7, Page 412					
	3e—a x d Prorated system Expense To New River Division	\$1,091.27				
	(4)					
	4a—Allocated New River Div. charges Form 12, Page 514		\$1,247.47			
	4b—Prorated System charges (3e) ..		\$1,091.27			
	4c—a plus b charges to be prorated.		\$2,238.74			
	4d—3 times Main Line plus Yard and side-track mileage Elmore Yard Form 7, Page 412		26.50			
	4e—3 times Main Line plus Yard and side track mileage New River Div. Form 7, Page 412		949.50			
	4f—Ratio Yard to New River Div. mileage—Form 7, Page 412 .....		.0279			
	4g—e x f Prorated New River Div. expense to Elmore Yard		\$45.25			

The Virginian Railway Co.
Assignment of Operating Expenses
Cost Study

Maintenance of Equipment—Princeton Yard. I. C. C. Docket 13832—Application of Formula Sheet 2
Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges	Of New River div. charges	District under review	Freight service	Coal service
301	Superintendence.	Common	Common	Common		
302	Shop Machinery.	\$32,654 28	\$9,575 50	\$1,392 50		
303	Shop Machinery—Depreciation.	\$74,146 87	\$21,368 96	\$99 47		
304	Power Plant Machinery.	\$113,301 29	\$30,944 55	\$1,491 97		
305	Power Plant Machinery—Depreciation.	0 6544	7,027 50	1,000 25		
308	Steam Locomotives—Repairs.	\$21,368 96	\$30,944 55	1,171 25		
309	Steam Locomotives Depreciation.	\$1,382 72	\$69,771 40	\$8540		
332	Injuries to Persons.					
333	Injuries.					
334	Stationery & Printing.					
335	Other Expenses.					
(1)						
1a	Charges to be prorated Form 12, Page 514					
1b	Allocated New River Div. charges A/c 302, 304, 308, 314, 326 Form 12, Page 514					
1c	Allocated Norfolk and New River Div. charges A/c 302, 304, 308, 314-326, Form 12, Page 514					
1d	b ÷ c Ratio New River Div. to total allocated					
1e	a x d Prorated System Expense to New River Div.					
(2)						
2a	Allocated New River Div. charges, Form 12, Page 514					
2b	Prorated System Charges (1e)					
2c	a plus b Charges to be prorated					
2d	Yard Switching Locomotive miles Pctn. Yard, Form 1, Page 4					
2e	Total Locomotive miles New River Division, Form 10, Page 440					
2f	d ÷ e Ratio Yard to total locomotive miles					
2g	e x g Prorated New River division Charges to Pctn. Yard					
(5)						
5a	Allocated Princeton Yard Charges Form 12, Page 514					
5b	Prorated New River Division Charges omitting A/c 326 & 327 (2g)					
5c	Prorated New River Division Charges for A/c 326 & 327 (4g)					
5d	b plus c Charges to be assigned to Freight Service					
5e	Freight switching Locomotive Hours Princeton Yard, Form 1, Page 4					
5f	Total switching locomotive hours Princeton Yard, Form 1, Page 4					
5g	e divided by f Ratio freight to total switching hours					
5h	d x g Common expense prorated					
(6)						
6a	Allocated Freight Expense direct to Princeton Yard (5a)					
6b	Prorated freight items					
6c	Prorated common items					
6d	a plus b plus c Total Freight expense to					
6e	Gross Tonnage through Princeton Yard Form 5, Page 410					
6f	d divided by e Expense per Gross ton					
(7)						
7a	Expense per gross ton freight service (6f)					
7b	Gross tons through Princeton Yard Coal Service, Form 5, Page 410					
7c	a x b Expense of coal switching					
7d	Net tons of coal through Princeton Yard, Form 5, Page 410					
7e	c divided by d Expense per ton of coal					
(3)						
3a	Charges to be prorated Form 12, Page 514					
3b	3 times Main Line plus yard and side track mileage New River Div. Form 7, Page 412					
3c	3 times main line plus yard and side track mileage System, Form 7, Page 412					
3d	b ÷ c Ratio New River Div. to System					
3e	a x d Prorated System Expense to New River Div.					
(4)						
4a	Allocated New River Div. Charges, Form 12, Page 514					
4b	Prorated System Charges (3e)					
4c	a plus b Charges to be prorated					
4d	3 times main line plus yard and side track mileage Pctn. Yard, Form 7, Page 412					
4e	3 times main line plus yard and side track mileage New River Division, Form 7, Page 412					
4f	Ratio Yard to New River Div. mileage					
4g	e x f Prorated New River Div. expense to Pctn. Yd.					

CHART

**TOO
LARGE
FOR
FILMING**

The Virginian Railway Co.
Assignment of Operating Expenses
Cost Study

Traffic Expenses, General Expenses and Taxxes—Princeton Yard. I. C. C. Docket 1382. Application of Formula Sheet 4

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges	Of New River div. charges	District under review	Freight service	Coal service
		(1)	(2)	(3)	(4)	
	Traffic Expenses:	Blank	Blank	Blank	Blank	
351	Superintendence.					\$133,222 94
352	Outside Agencies.					\$5,003 20
353	Advertising.					\$6,579 75
354	Traffic Associations.					\$11,095 95
357	Insurance.					\$22,678 90
358	Stationery & Printing.					\$978,634 03
359	Other Expenses.					02317
	General Expenses:					\$3,086 78
451	Salaries and Expenses of General Officers.					678,798
452	Salaries and Expenses of Clerks and Attendants.					\$0 00455
453	General Office Supplies and Expenses.					
454	Law Expenses.					
455	Insurance.					
458	Stationery & Printing.					
459	Valuation Expenses.					
460	Other Expenses.					
	Taxes:					
532	Taxes.					

(5)

5a—Expense to be prorated Form 14, Page 545
5b—Maintenance of Way & Structures Expense assigned to Coal Service (Formula Sheet 1) (9 e) Form 14, Page 544
5c—Maintenance of Equipment Expense assigned to Coal Service (Formula Sheet 2) (7e) Form 14, Page 544
5d—Transportation Expense assigned to Coal Service (Formula Sheet 3) (8c) Form 14, Page 544
5e—b plus c plus d Total Expense assigned to Coal Service
5f—Total Expenses System excluding Traffic Expenses and General Expenses Form 14, Page 545
5g—c divided by f Ratio Coal Expenses to Total Expenses
5h—a x g Expenses prorated to Coal Service
5i—Net Tons of coal handled through Princeton Yard, Form 5, Page 345
5j—h divided by i Expense per ton of coal handled through Princeton Yard

Assignment of Operating Expenses

Traffic Expenses, General Expenses and taxes—Road, Winding Gulf Mines to Elmore. I. C. C. Docket 13832—Application of Formula Sheet 4-A

Cost Study

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges	Of New River div. charges	District under review	Freight service	Coal service
		(1)	(2)	(3)	(4)	
	Traffic Expenses:	Blank	Blank	Blank	Blank	
351	Superintendence.					\$133,222 94
352	Outside Agencies.					\$11,536 78
353	Advertising.					\$11,980 50
354	Traffic Associations.					\$20,633 10
357	Insurance.					\$44,150 38
358	Stationery & Printing.					\$978,634 03
359	Other Expenses.					0451
	General Expenses:					\$6,008 35
451	Salaries and Expenses of General Officers.					6,361,941
452	Salaries and Expenses of Clerks and Attendants.					\$0 000950
453	General Office Supplies and Expenses.					
454	Law Expenses.					
455	Insurance.					
458	Stationery & Printing.					
459	Valuation Expenses.					
460	Other Expenses.					
	Taxes:					
532	Taxes.					

(5)

5a—Expenses to be prorated Form 14, Page 545	Formula Sheet 1A (9c)
5b—Maintenance of Way and Structures Expense assigned to Coal Service	Form 15, Page 559
5c—Maintenance of Equipment Expense assigned to Coal Service	Formula Sheet 2A (13c) Form 15, Page 560
5d—Transportation Expense assigned to Coal Service	Formula Sheet 3A Form 15, Page 561 (11c)
5e—b plus c plus d Total Expense assigned to Coal Service	
5f—Total Expenses System excluding Traffic Expenses and General Expenses	Form 14, Page 545
5g—e divided by f Ratio coal expense to total expense	
5h—a x g Expense prorated to Coal Service	
5i—Net Tons coal handled—Winding Gulf to Elmore Form 2, Page 139	
5j—h divided by i Expense per ton of coal handled one mile	
Expense of Handling Per Ton of Coal:	
Expense Coal Service (5h)	\$6,008 35
Tons of coal handled	375,078
Expense per ton of coal	\$0 01602

The Virginian Railway Co.
Assignment of Operating Expenses
Cost Study

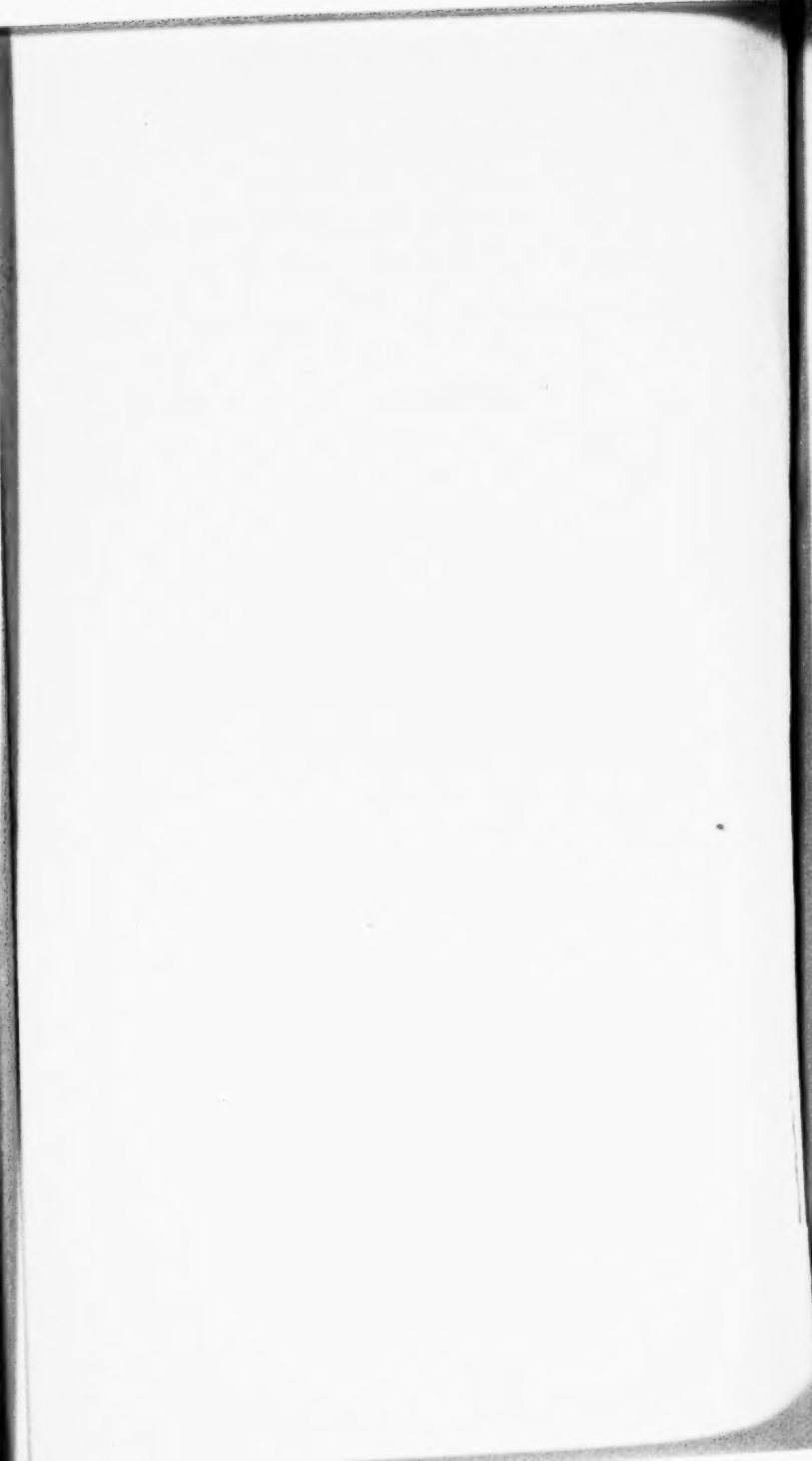
Traffic Expenses, General Expenses and Taxes—Road, Elmore to Princeton. I. C. C. Docket 13832—Application of Formula Sheet 4-A

Basis of Assignment and Development of Unit Expenses

Account No.	Name	Of system charges (1)	Of New River div. charges (2)	District under review (3)	Freight service (4)	Coal service
	Traffic Expenses:	Blank	Blank	Blank	Blank	
351	Superintendence.					\$133,222 94
352	Outside Agencies.					\$12,085 18
353	Advertising.					\$53,341 47
354	Traffic Associations.					\$37,088 99
357	Insurance.					\$102,515 64
358	Stationery & Printing.					\$978,634 03
359	Other Expenses.					10475
	General Expenses:					\$13,955 10
451	Salaries and Expenses of General Officers.					24,347,547
452	Salaries and Expenses of Clerks and Attendants.					\$0 000573
453	General Office Supplies and Expenses.					
454	Law Expenses.					
455	Insurance.					
458	Stationery & Printing.					
459	Valuation Expenses.					
460	Other Expenses.					
	Taxes:					
532	Taxes.					

(5)

Expense to be prorated Form 14, Page 545
 Maintenance of Way and Structures Expense assigned to Coal Service (Formula Sheet 1A) Form 14, Page 544 (9c)
 Maintenance of Equipment Expense assigned to Coal Service (Formula Sheet 2A) (13c) Form 14, Page 544
 Transportation Expense assigned to Coal Service (Formula Sheet 3A) Form 14, Page 544 (11e)
 plus c plus d Total Expense assigned to Coal Service
 Total Expenses System excluding Traffic Expenses and General Expenses Form 14, Page 545
 divided by f Ration Coal Expense to total expense
 a x g Expenses prorated to Coal Service
 Net Tons Coal handled—Elmore to Princeton Form 2, Page 139
 divided by i Expense per ton of coal handled one mile



[fol. 1265]

EXHIBIT 30—Continued

The Virginian Railway Company

I. C. C. Docket 13832

Form 1

Yard Switching Locomotive Hours and Miles, Month of
June, 1922

Freight Yard:	Locomotive hours	Locomotive miles
Passenger Switching Service	2.17	15.02
Freight Switching Service	293.70	1,762.20
Other Switching Service	0.00	0.00
Total Switching Service	<u>295.67</u>	<u>1,775.22</u>
Ratio of Freight Service to Total Switching Service—Elmore Yard..	0.9927	0.9927
Passenger Yard:		
Passenger Switching Service	30.00	180.00
Freight Switching Service	1,000.25	6,001.50
Other Switching Service	141.00	846.00
Total Switching Service	<u>1,171.25</u>	<u>7,027.50</u>
Ratio of Freight Service to Total Switching Service—Princeton Yard	0.8540	0.8540

[fol. 1206]

The Virginian Railway Company

I. C. C. Docket 13832

Form 2

Ton Miles Exclusive of Locomotives and Tenders. Month of June, 1922

	Net ton-miles, coal service	Gross ton-miles, coal service	Gross ton-miles, all freight service
Winding Gulf Mines to Elmore:			
Coal Service—Lading only.....	6,561,941	.....	.....
Coal Service—Empty cars.....	2,232,527	.....
Coal Service—Loaded Cars plus Lad- ing	8,800,533	.....
Total Gross Coal Service....	11,003,000	.....
Gross Freight Service other than Coal—Loaded and Empty Cars plus Lading			
Gross Coal Service—Loaded and Empty Cars plus Lading.....	1,604,418
Total Freight Service.....	11,003,000
Elmore to Princeton:			
Coal Service—Lading only.....	24,347,547	.....	.....
Coal Service—Empty Cars.....	8,107,587	.....
Coal Service—Loaded Cars plus Lad- ing	33,475,440	.....
Total Gross Coal Service....	41,675,027	.....
Gross Freight Service other than Coal—Loaded and Empty Cars plus Lading			
Gross Coal Service.....	4,046,532
Total Freight Service.....	41,673,027
Total Freight Service.....	45,710,550

[fol. 1267]

The Virginian Railway Company

I. C. C. Docket 13832

Form 3

Locomotive ton miles. Month of June, 1922

	Freight service	Passenger service	Total
Winding Gulf Mines to Elmore:			
Locomotive Ton Miles in Freight Trains	1,715,320	.....	.....
Locomotive Ton Miles light Freight	13,621	.....	.....
Total Freight Locomotive Ton Miles	1,728,941	.....	1,728,941

	Freight service	Passenger service	Total
Locomotive Ton Miles in Passenger Trains		790,143	.....
Locomotive Ton Miles Light Passen- ger .....		.....	.....
Total Passenger Locomotive Ton Miles		790,143	790,143
Total Locomotive Ton Miles..	.....	.....	2,519,084
Ratio of Freight to Total.....	.6803		

Elmore to Princeton:

Locomotive Ton Miles in Freight Trains	9,028,050	.....	.....
Locomotive Ton Miles Light Freight	2,183,348	.....	.....
Total Freight Locomotive Ton Miles	11,211,998	.....	11,211,998
Locomotive Ton Miles in Passenger Train	807,806	.....	.....
Locomotive Ton Miles Light Passen- ger	13,203	.....	.....
Total Passenger Locomotive Ton Miles	821,009	821,009	
Total Locomotive Ton Miles.....	.....	.....	12,033,007
Ratio of Freight to Total.....	.9317		

New River Division:

Locomotive Ton Miles in Freight Trains	23,151,706
Locomotive Ton Miles Light Freight	3,140,180
Locomotive Ton Miles Switching Service	3,446,750
Locomotive Ton Miles in Passenger Trains	5,045,316
Locomotive Ton Miles Light Passenger	117,873
Total	34,913,885

[fol. 1268]

The Virginian Railway Company

I. C. C. Docket 13832

Form 4

Average Lading of Coal Cars. Month of June, 1922

Car series numbers	Rated capacity in tons	Total number of cars	Total lading in pounds	Average lading	
				Pounds	Tons
1000 to 3199 and 15000 to 17999....	52½	6818	751,498,840	110,223	55
18000 to 18999 and 6000 to 6999.....	53	2709	326,751,700	120,617	60
19000 to 19999.....	100	715	160,815,680	233,308	117

[fel. 1269] The Virginian Railway Company

I. C. C. Docket 13832

Form 5

Tonnage Handled Through Yards. Month of June, 1922

	Net coal tonnage	Gross coal tonnage	Gross tonnage, all freight service
Elmore Yard:			
Into Elmore Yard from Winding Gulf Mines . . .	375,078	506,406	517,189
Into Elmore Yard from Fourth District	250,341	547,801	402,219
From Elmore Yard East- bound	653,117	906,425	954,260
From Elmore Yard West- bound	8,739	442,117	561,735
	<hr/>	<hr/>	<hr/>
Totals in and out of Elmore Yard . . .	1,287,275	2,203,749	2,435,403
	<hr/>	<hr/>	<hr/>
Average Tons Through Elmore Yard	643,637	1,101,374	1,217,701
	<hr/>	<hr/>	<hr/>
Princeton Yard:			
Into Princeton from West	702,432	974,968	1,021,904
Into Princeton from East	.....	234,960	297,307
From Princeton Eastbound	655,165	910,189	950,666
From Princeton Westbound	.....	238,216	296,121
	<hr/>	<hr/>	<hr/>
Totals in and out of Princeton Yard ..	1,357,597	2,358,333	2,565,998
	<hr/>	<hr/>	<hr/>
Average Tons Through Princeton Yard	678,798	1,179,166	1,282,999

(Here follow side folios pages 1270, 1271, 1272 and 1273)

[fol. 1270]

The Virginian Railway Company

I. C. C. Docket 13832

Form 6

Depreciation Expense for Year Ended June 30, 1922

Account	Name	Annual rate	Elmore yard		Princeton yard		Elmore to Princeton		Winding Gulf Mines to Elmore	
			Valuation	Depreciation	Valuation	Depreciation	Valuation	Depreciation	Valuation	Depreciation
203	Roadway, Depreciation.....	1/3 of 1%	\$291,828 00	\$972 76	\$403,128 00	\$1,343 76	\$2,112,513 00	\$7,041 71	\$1,089,846 00	\$3,632 82
209	Bridges, Trestles and Culverts, Depreciation.....	1-1/2%	.....	.....	.....	.....	1,181,370 00	17,720 55	89,131 00	1,336 97
234	Timber Fuel Stations, Depreciation.....	6%	.....	.....	12,214 00	732 84	.....	.....	.....	.....
234	Concrete Fuel Stations, Depreciation.....	2%	30,339 00	606 78	.....	.....	.....	.....	.....	.....
236	Shops and Engine Houses.....	2%	32,184 00	643 68	401,357 00	8,027 14	.....	.....	.....	.....
256	Power Plant Buildings.....	2%	.....	.....	15,363 00	307 26	.....	.....	.....	.....
Total Depreciation 1 Year.....			\$354,351 00	\$2,223 22	\$832,062 00	\$10,411 00	\$3,293,883 00	\$24,762 26	\$1,178,977 00	\$4,969 79
Average Depreciation 1 Month.....			.....	\$185 27	.....	\$867 58	.....	\$2,063 52	.....	\$414 15

[fol. 1271]

The Virginian Railway Company

I. C. C. Docket 13832

Form 7

Mileage as of June 30, 1922

	Miles of main track	Miles of side and yard track	3 times main line track	3 times main line plus yard and side track
Elmore Yard.....	5.26	10.72	15.78	26.50
Princeton Yard.....	4.00	28.39	12.00	40.39
Elmore to Princeton.....	42.59	11.70	127.77	139.47
Winding Gulf Mines to Elmore	51.51	31.04	154.53	185.57
New River Division	267.19	147.93	801.57	949.50
System	550.91	270.45	1,592.75	1,863.18

[fol. 1272]

The Virginian Railway Company

I. C. C. Docket 13832

Form 8

Blank

The Virginian Railway Company

I. C. C. Docket 13832

Form 9

Maintenance of Way and Structures Expense, Year Ended June 30, 1922

Period	Acct.	System charges to be pro-rated to		New River division charges to be prorated to		Charges assigned directly to			
		Yard service	Road service	Yard service	Road service	Elmore yard	Princeton yd.	Elmore to Princeton	Winding Gulf Mines to Elmore
	201	\$77,374.50	\$77,374.50	\$19,686.08	\$19,686.00	\$777.79	\$538.54	\$1,112.88	\$1,936.42
	274	2,547.82	2,547.82						
	275	3,113.95	3,113.95						
	276	2,469.94	2,469.94	.00	.00				
	277	1,541.35	1,541.35						
Charges Year Ended June 30, 1922		\$87,047.56	\$87,047.56	\$19,693.08	\$19,693.08	\$777.79	\$538.54	\$1,112.88	\$1,936.42
1/12—Average 1 month		\$7,253.96	\$7,253.96	\$1,641.09	\$1,641.09	\$64.82	\$44.86	\$92.74	\$161.37
	202	\$1,912.14	\$1,912.14	\$22,562.46	\$22,562.46	\$3,473.06	\$3,366.13	\$19,076.10	\$24,436.65
	206		92.40		1,337.32			84.30	458.02
	208	8,876.13	8,876.13	108.84	108.84	726.94	3,705.66	7,746.46	1,760.06
	212	18.48	18.48	4,038.15	4,038.15	2,458.39	8,754.58	17,244.62	25,344.79
	214	361.82	361.82	1,415.65	1,415.65	2,901.53	3,206.38	13,102.21	11,936.10
	216	26,462.21	26,462.21	2,531.47	2,531.47	3,815.64	4,943.99	11,367.30	14,022.48
	218	421.96	421.96	3,345.31	3,345.31	236.95	1,075.05	10,094.04	877.14
	220	489.72	489.72	14,112.72	14,112.72	12,801.64	12,823.40	37,386.35	48,134.14
	221	562.38	562.38	28.16	28.16		9.92	77.86	169.18
	225	774.20	774.20	480.32	480.32	2.14	624.03	555.12	209.37
	227	2,355.74	2,355.74	717.05	717.05	2,061.21	2,680.13	1,219.26	1,315.48
	229	181.72	181.72	206.75	206.75	203.00	72.65	412.86	527.20
	231	2,049.40	2,049.40	1,074.32	1,074.32	1,158.40	2,766.54	1,576.15	46.79
	233	1,613.31		677.76		999.45	2,994.70		
	235	6,008.00	6,008.00	18,436.17	18,436.17	8,601.24	4,818.48	48.88	
	247	661.28	661.28	18,480.62	18,480.62	31.52	589.30	293.25	304.78
	253						157.34		
	255	3.03	3.03						
	257						21.39		
	259					340.04	2,480.01		
	261						645.80		
	269	1,152.71	1,152.71	3,477.81	3,477.81	84.67	251.85	912.07	500.03
	271	6,935.65	6,935.65	3,847.07	3,847.07	391.79	418.26	1,601.88	2,349.32
	272			59.50	59.50	67.85	43.25	426.49	369.73
Charges Year Ended June 30, 1922		\$60,839.88	\$59,318.97	\$87,523.81	\$88,183.37	\$40,355.46	\$56,449.05	\$123,227.22	\$132,761.26
1/2—Average 1 Month		\$5,069.99	\$4,943.25	\$7,293.65	\$7,348.61	\$3,362.96	\$4,704.09	\$10,268.94	\$11,063.44
	203					\$972.76	\$1,343.76	\$7,041.71	\$3,632.82
	209							17,720.55	1,336.97
	233								
	234					\$606.78	732.84		
	236					643.68	8,027.14		
	254						307.26		
Charges Year Ended June 30, 1922						\$2,223.22	\$10,411.00	\$24,762.26	\$4,969.79
1/12—Average 1 month						\$185.27	\$867.58	\$2,063.52	\$414.15

Statement of Total Maintenance of Way and Structures Charges

	Total charges	
	For entire system	For New River division
Total Charges Exclusive of accounts 201, 274, 275, 276, 277	\$2,347,869.83	\$1,015,695.85
1/12—Average Monthly Charges	\$195,655.82	\$84,641.32

[fol. 1274] The Virginian Railway Company

I. C. C. Docket 13832

Form 10

Road Locomotive Miles and Train Miles for Month of June,
1922

Locomotive Miles Exclusive of Yard Service

New River Division:

Light and Other Freight Locomotive Miles excluding Yard Switching.....	9,403
Locomotive Miles in Freight Trains.....	81,195

Total Locomotive Miles, Freight Service....	90,598
Passenger Locomotive Miles.....	28,853

Total Locomotive Miles.....	119,451
-----------------------------	---------

Elmore to Princeton:

Light and Other Freight Locomotive Miles, excluding Yard Switching.....	5,375
Locomotive Miles in Freight Trains.....	20,484

Total Locomotive Miles, Freight Service....	25,859
Passenger Locomotive Miles.....	4,243

Total Locomotive Miles.....	30,102
-----------------------------	--------

Winding Gulf Mines to Elmore:

Light and Other Freight Locomotive Miles.....	68
Locomotive Miles in Freight Trains.....	7,819

Total Locomotive Miles, Freight Service..	7,887
Passenger Locomotive Miles.....	9,120

Total Locomotive Miles.....	17,007
-----------------------------	--------

Train Miles

New River Division:

Freight Train Miles.....	64,699
Passenger Train Miles.....	28,561
Total Train Miles.....	93,260

Elmore to Princeton:

Freight Train Miles.....	15,519
Passenger Train Miles.....	4,241
Total Train Miles.....	19,760

Winding Gulf Mines to Elmore:

Freight Train Miles.....	7,819
Passenger Train Miles.....	9,120
Total Train Miles.....	16,939

[fol. 1275] The Virginian Railway Company

I. C. C. Docket 13832

Form 11

Fuel Coal Issued Road Locomotives, Entire System, Month
of June, 1922

	Tons
Total Fuel Coal Issued All Road Locomotives....	34,914
Fuel Coal Issued Road Freight Locomotive Only..	32,133
Ratio of Fuel issued Freight Locomotives to Total Fuel Issued.....	0.920

(Here follow side folio pages 1276 and 1277)

CHART

TOO

LARGE

FOR

FILMING

EXHIBIT 31

The Virginian Railway Company

Statement Showing Expenditures for Additions and Betterments and Equipment by Years, for 1916 to 1921, Inclusive, and for Nine Months Ended September 30, 1922, and The Approximate Amount of Bonds That Could be Taken Down on These Expenditures Under the First Mortgage

Year ended December 31st	Additions and betterments	Equipment	Branch lines and double tracking	Advances to the Virginian Terminal Rail- way for A. & B.	Total expenditures	Approximate amount of bonds which may be taken down to extent of 75% of expenditure		Approximate amount of bonds which may be taken down to extent of 100% of expenditure not to exceed \$50,000 per track mile— Branch lines & double tracking	Approximate amount of bonds which may be taken down to extent of 100% of expenditure— The Vgn. Term.	Total bonds	Remainder being an amount upon which bonds may not be taken down
						Additions and betterments	Equipment				
1916	\$226,626 96	\$358,329 30	\$464,192 52	\$28,660 29	\$1,077,809 07	\$169,970 00	\$268,750 00	\$464,190 00	\$28,660 00	\$931,570 00	\$146,239 07
1917	758,642 37	1,872,635 71	493,531 20	457,555 01	3,582,364 29	568,980 00	1,404,480 00	493,530 00	457,550 00	2,924,540 00	657,824 29
1918	605,583 96	1,829,845 12	685,939 86	254,219 67	3,375,588 61	454,190 00	1,372,380 00	685,940 00	254,220 00	2,766,730 00	608,858 61
1919	728,086 32	48,134 85	1,051,068 10	36,582 20	1,863,871 47	546,060 00	36,100 00	1,051,060 00	36,580 00	1,669,800 00	194,071 47
1920	705,459 62	6,496,443 63	871,846 95		8,073,750 20	529,090 00	4,872,330 00			5,401,420 00	2,672,330 20
1921	1,242,400 11	2,711,455 86	815,587 77	62,809 41	4,832,253 15	931,800 00	2,033,590 00		62,800 00	3,028,190 00	1,804,063 15
Nine months ended Sept. 30, 1922	630,173 29	140,694 96	92,991 90	11,722 09	875,582 24	472,630 00	105,520 00		11,720 00	589,870 00	285,712 24
Total	\$4,896,972 63	\$13,457,539 43	\$4,475,158 30	\$851,548 67	\$23,681,219 03	\$3,672,720 00	\$10,093,150 00	\$2,694,720 00	\$851,530 00	\$17,312,120 00	\$6,369,099 03

[fol. 1278] The Virginian Railway Company

I. C. C. Docket 13832

Form 14

Traffic Expenses, General Expenses, and Taxes, Year
Ended June 30, 1922

Account

Yard service,
commonRoad service,
common

Traffic Expenses:

351		
352	\$58,543.35	\$58,543.35
353	37,930.83	37,930.83
354	4,190.73	4,190.73
357	2,847.58	2,847.58
358	11.82	11.82
359	25,254.56	25,254.56

General Expenses:

451		
452	73,167.23	73,167.23
453	149,128.79	149,128.79
454	17,899.52	17,899.52
455	55,594.98	55,594.98
456	3.98	3.98
459	11,304.59	11,304.59
460	32,272.87	32,272.87
461	20,279.71	20,279.71
	327.48	327.48

Taxes:

532		
	1,109,917.27	1,109,917.27

Total	\$1,598,675.29	\$1,598,675.29
-------	----------------	----------------

1/12—Average 1 Month	133,222.94	133,222.94
----------------------	------------	------------

(Here follows first sheet of Exhibit 31, marked side folio
page 1279)

[fol. 1280] The Virginian Railway Company

Statement Showing Estimated Requirements, Covering
Fixed Charges and Rents for Leased Roads, for Year
Ended December 31, 1923

Interest at 5% per annum on \$37,417,000 First Mortgage Bonds	\$1,870,850 00
Interest at 6% per annum on the outstanding Equipment Trust Certificates, Series C...	226,200 00
Interest at 6% per annum on the outstanding Equipment Trust No. 76	81,525 00
Installment on principal of Equipment Trust, Series C	520,000 00
Installment on principal of Equipment Trust No. 76	108,700 00
Interest at 6% per annum on loan of \$2,000,000 from United States Government under Section 210, Transportation Act, 1920	120,000 00
Rental for lease of Virginian & Western Rail- way	100,000 00
Dividend on \$27,955,000 Preferred 6% Cumu- lative Stock	1,677,300 00
Total	\$4,704,575 00

[fol. 1281] The Virginian Railway Company

Comparative Statement of Additional Investment Neces-
sary to Provide Equipment and Facilities to Carry
2,000,000 Additional Tons of Coal on Virginian Railway

Westbound Via Chesapeake and Ohio:

Facilities	\$1,291,200 00
12 Locomotives	1,140,000 00
5,000 Coal Cars	12,000,000 00
8 Caboose Cars	20,000 00
Total	\$14,451,200 00

Eastbound:

18 Locomotives	\$1,710,000 00
2,000 Coal Cars	4,800,000 00
10 Caboose Cars	25,000 00
	<u>\$6,535,000 00</u>

[fol. 1282] The Virginian Railway Company

Statement Purporting to Show Money Outlay in Purchase of 5,000 Steel Coal Cars, 12 Locomotives and 8 Caboose Cars

Cash to be realized from sale of \$9,870,000 Equipment Certificates on basis of discount 7.7%, being the latest experience in sale of such securities	\$9,110,010 00
Discount on \$9,870,000 Equipment Certificates sold for 92.3 or 7.7% discount	759,990 00
Cash to be paid on the equipment, being the difference between the total cost and certificates equal to 75% of total cost that may be issued	3,290,000 00
Total cost of equipment	<u>\$13,160,000 00</u>
Interest at 6% per annum for 10 years	7,896,000 00
Total money outlay with respect to purchase of equipment and interest on same	<u>\$21,056,000 00</u>
Average money outlay per annum, period of ten years	<u><u>\$2,105,600 00</u></u>

Statement Showing Cash Outlay During First Year, with Respect to Purchase of the Above Equipment

Difference between amount realized from sale of Equipment Certificates and total cost of equipment	\$4,049,990 00
Interest at 6% per annum on \$13,160,000—Cost of Equipment	789,600 00
Two semi-annual payments of installments on principal of \$9,870,000—Equipment Certificates, 5% of principal payable semi-annually	987,000 00
	<u>\$5,826,590 00</u>

[fol. 1283] The Virginian Railway Company

Statement Purporting to Show Money Outlay in Purchase
of 2,000 Steel Coal Cars, 12 Locomotives and 8 Caboose
Cars

Cash to be realized from sale of \$4,470,000 Equipment Certificates on basis of dis- count of 7.7%, being the latest experience in sale of such securities	\$4,125,810 00
Discount on \$4,470,000 Equipment Certi- ficates sold for 92.3 or 7.7% discount	344,190 00
Cash to be paid on the equipment, being the difference between the total cost and cer- tificates equal to 75% of total cost that may be issued	1,490,000 00
Total cost of equipment	\$5,960,000 00
Interest at 6% per annum for 10 years	3,576,000 00
Total money outlay with respect to purchase of equipment and interest on same	\$9,536,000 00
Average money outlay per annum, period of ten years	\$953,600 00

Statement Showing Cash Outlay During First Year, with
Respect to Purchase of the Above Equipment

Difference between amount realized from sale of Equipment Certificates and total cost of equipment	\$1,834,190 00
Interest at 6% per annum on \$5,960,000— Cost of Equipment	357,600 00
Two semiannual payments of installments on principal of \$4,470,000—Equipment Cer- tificates 5% of principal payable semi- annually	447,000 00
	\$2,638,790 00

(Here follows Exhibit 32, map of the Virginian Railway
and connections, side folio page 1284)

MAPS

TOO

LARGE

FOR

FILMING



[fol. 1285]

SANDER'S EXHIBIT No. 33

Rates in Bituminous Coal, Carloads, from Hot Coal, W. Va.

In cents per ton, 2,000 Pounds

To	To Pemberton, W. Va.	Beyond	Total	Miles	Rate per ton mile, mills
Toledo, Ohio (for transshipment to vessels via Pemberton, W. Va., C. & O. Ry., to Columbus, O., and H. V. Ry.).	\$1.14	\$2.06	\$3.20	406	7.9
Detroit, Mich. (via Pemberton, C. & O. Ry., to Columbus, O., H. V. Ry., to Toledo, O., and N. C. R. R.).	1.14	2.78	3.92	464	8.4
Milwaukee, Wis. (via Pemberton, W. Va., C. & O. Ry., to Columbus, O., H. V. Ry. to Toledo, O., N. C. R. R. to Detroit, Mich., G. T. Ry. to Grand Haven, Mich., G. V. Ry. (Ferry) to Milwaukee, Wisc.).	1.14	3.99	5.13	738	6.1
Chicago, Ills. (via Pemberton and C. & O.).	1.14	3.24	4.38	596	7.3

Tariff Authorities:

Vgn. Ry., I. C. C. No. 1542.

C. & O. Ry., I. C. C. No. 8665

C. & O. Ry., I. C. C. No. 9360.

[fols. 1286 & 1287] EXHIBIT No. 34

62 I. C. C., 49

Rates on Bituminous Coal, Carloads

From Branchton, Pa., to Perth Amboy, N. J.

In Cents per Ton of 2,000 Pounds.

To Butler Transfer	Beyond	Total	Miles	Rate per ton-mile, mills
\$1.01	\$2.85	\$3.86	465	8.3

Route: B. & L. E. to Butler, Pa.; B. R. & P. to Clearfield, Pa.; N. Y. C. to Newberry Jet., Pa.; P. & R. to Mt. Carmel, Pa., and L. V. beyond.

Tariff Authorities:

B. & L. E. R. R., I. C. C. No. 717.

B. R. & P. R. R., I. C. C. No. 7676.

[fol. 1288] INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 35

Date: Nov. 14, 1922

Steno.: Chany.

Docket No. 13832

Trackage Agreement Dated 1st November, 1917, Between the Chesapeake and Ohio R'y Co., Piney River and Paint Creek Railroad Co., and the Virginian Railway Co.

(Also Agreement Dated 19th Day of April, 1917, Between the New River Co., the Virginian Railway Co. and the Chesapeake and Ohio R'y Co.)

[fol. 1289] This Agreement made this 1st day of November, 1917, between The Chesapeake and Ohio Railway Company, a corporation organized under the laws of the State of Virginia (hereinafter called the "Chesapeake Company"), the Piney River & Paint Creek Railroad Company, a corporation organized under the laws of the State of West Virginia (hereinafter called the "Piney Company"), and The Virginian Railway Company, a corporation organized under the laws of the State of Virginia (hereinafter called the "Virginian Company");

Whereas on the 19th day of April, 1917, an agreement was made and entered into between The New River Company, of the first part; the Virginian Company, of the second part, and the Chesapeake Company, of the third part (a copy whereof is hereto attached); and

Whereas in accordance with said agreement and through transfers and conveyances made in pursuance thereof and concurrently herewith, the Chesapeake Company has acquired all the capital stock of the Piney River & Paint Creek Railroad, and has also acquired the Price Hill Division of the White Oak Railway Company, and the Virginian Company has acquired those portions of the White Oak Railway described as follows, to-wit: that certain line of railroad extending from Oakwood and Carlisle, in Fayette County, to Lochgelly, in said County, and the connecting line of railway extending from a point on said line at Duncan's Crossing, in said County, to a connection with the Vir-

ginian Railway near Bishop, in said County, with all of the right of way, depots, depot grounds, side tracks and spurs belonging and appurtenant thereto; and

Whereas in and by said agreement the Virginian Company and the Chesapeake Company did agree with The New River Company that they and the Piney Company would enter into, for a period of ninety-nine (99) years, this agreement, and that they, to-wit: the Virginian Company and the Chesapeake Company, and each of them, would duly maintain and carry out the provisions of said agreement during the life thereof;

Now, Therefore, This Agreement Witnesseth: That for and in consideration of the premises, and of the mutual promises, agreements and undertakings each with the other as herein set forth, and of one dollar (\$1.00) paid by each party hereto to the other, the receipt whereof is hereby acknowledged:

[fol. 1290]

Article I.

Piney River and Paint Creek; Price Hill and White Oak

1. The Chesapeake Company and the Piney Company covenant and agree that the property of the Piney Company shall be incorporated into and operated as a part of the system of the Chesapeake Company during the period of this agreement. And the Virginian Company and the Chesapeake Company mutually agree with each other that the Virginian Company and the Chesapeake Company shall have equal access with their respective locomotives, cars and trains, to and from all mining operations, other industries and stations now or hereafter located on said Piney River and Paint Creek Railroad, said Price Hill Division and said line of railroad extending from Oakwood and Carlisle, in Fayette County, to Lochgelly, in said County, and said connecting line of railway extending from a point at or near Duncan's Crossing, in said County, to said connection with the Virginian Railway, near Bishop, in said County, or on any extension or extensions, branches or spurs, of either, and the equal right to use and enjoy any and all of the facilities appertaining to the said Piney River and Paint Creek Railroad, said Price Hill Division and said line of railroad extending from Oakwood and Carlisle to Lochgelly

and said connecting line of railway extending from a point at or near Duncan's Crossing to a point of connection near Bishop, and any extension or extensions, branches or spurs of either, upon the terms and conditions hereinafter set forth, and under reasonable and proper rules and regulations to be from time to time prescribed, and upon failure to agree the matter to be made the subject of arbitration in the manner hereinafter provided; this right, however, shall not be construed to permit one company to monopolize the tracks or facilities of the other, and it is hereby declared the intent of this contract that each company shall in all respects accord to the other company its full and equal rights and privileges.

2. The Virginian Company shall pay to the Chesapeake Company for the trackage rights above referred to over the Piney River and Paint Creek Railroad an annual rental of two and one-half per cent. ($2\frac{1}{2}\%$) upon the sum of Two Hundred and Seventy Thousand Dollars (\$270,000.00), and upon the sum of Eleven Hundred and Eighteen Dollars and Sixty-eight Cents (\$1,118.68), cost of water station at Skelton erected by the Chesapeake Company, and for the trackage rights aforesaid over the said Price Hill Division [fol. 1291] an annual rental of two and one-half per cent. ($2\frac{1}{2}\%$) upon the sum of Seventy-seven Thousand, Five Hundred Dollars (\$77,500.00); and in like manner the Chesapeake Company shall pay to the Virginian Company for the trackage rights above referred to over said line of railroad extending from Oakwood and Carlisle, in Fayette County, to Lochgelly, in said County, and said connecting line of railway extending from a point at or near Duncan's Crossing, in said County, to said connection with the Virginian Railway, near Bishop, in said County, an annual rental of two and one-half per cent. ($2\frac{1}{2}\%$) upon the sum of Three Hundred and Seventy-nine Thousand Five Hundred Dollars (\$379,500.00); and in the event of the construction of any extensions or betterments said rentals shall be, respectively, increased by two and one-half per cent. ($2\frac{1}{2}\%$) upon the cost thereof; all of the rentals herein provided for shall be paid in equal monthly instalments on or about the 20th day of each month for the preceding calendar month.

3. All maintenance and operating expenses and taxes shall be pro-rated and divided between the said Virginian and Chesapeake Companies upon the basis of "cars handled" by or for each of said Companies; all cars are to be counted, whether loaded or empty, and a locomotive or caboose is to be counted as one car; velocipede, hand, M. of W., motor or push cars are not to be counted.

4. The Virginian Company, in its discretion, may construct such extensions, branches, side tracks, spurs and betterments upon said line of railroad extending from Oakwood and Carlisle, in Fayette County, to Lochgelly, in said County, and said connecting line of railway extending from a point at or near Duncan's Crossing, in said County, to said connection with the Virginian Railway near Bishop, in said County; the Chesapeake Company, in its discretion, may construct such extensions, branches, side tracks, spurs and betterments upon the Piney River & Paint Creek Railroad and also upon said Price Hill Division.

Provided that if it shall be desired to connect any new coal operation or other industry with any of the tracks in this Section 4 of Article I mentioned, and the Company owning or operating such track shall not desire to make such connection, the other Company, party hereto entitled to use such track hereunder, may put in such connection, upon thirty (30) days' notice to such owning or operating Company of its intention so to do, if such owning or operating Company shall not within said period of thirty (30) days elect, and notify the other Company of its intention, to put in such connection itself; if such connection be so put in by the Company not owning the track with which the connection is made, it shall have the exclusive right and duty to use, operate and maintain the same.

5. The supervision of operations on the above described properties over which the said Virginian Company and the said Chesapeake Company are to have equal access shall be adjusted from time to time between said Virginian Company and said Chesapeake Company as conditions may arise and require, subject to arbitration as hereinafter provided; and, if deemed advisable, the parties hereto may join in the appointment of a superintendent, or other official, in charge of the operation and maintenance of the

tracks, facilities and train service on said properties herein described, whose jurisdiction and duties may from time to time be defined and extended, and such official shall be appointed and his authority and duties prescribed only by the written agreement of the chief operating officer of each party hereto, and the services of all joint officials and employes must be performed with strict impartiality and fairness; upon request of the chief operating officer of either party hereto, any joint official or employe shall be removed.

If deemed desirable, separate engines and crews may be assigned to do the work on the tracks over which the said Virginian and Chesapeake Companies have equal right of access under this agreement, and in any such case the cost and expenses of the crew or crews, including rental for the locomotives, and all expenses in connection therewith, shall be pro-rated upon the basis of "cars handled" each month.

6. The Chesapeake Company covenants and agrees that it will haul, or cause to be hauled, the cars of the Virginian Company from Carlisle Junction to and from the mines at Scarbro, Whipple and Wingrove; the Virginian Company to pay the Chesapeake Company such reasonable sum as may from time to time be determined by mutual agreement (and by arbitration in case of failure to agree) per loaded car, empties not to be charged for, and upon failing to so switch said cars the Virginian Company shall have the right to do said switching itself if it so elects.

[fol. 1293]

Article II

Chesapeake Trackage Granted Virginian Company

1. In addition to the foregoing the Chesapeake Company hereby grants to the Virginian Company trackage rights as follows, subject to the conditions, terms and limitations hereinafter set forth:

From the connection between the Chesapeake and the Virginian Companies' railways at Pemberton; thence via the line heretofore known as the Raleigh & Southwestern Railway, and via a "Y" connection, to Beckley Junction, where a connection is made with the Piney River & Paint Creek Railroad; thence (from Beckley Junction) to Westwood; and included in this trackage is to be access to the

coal and coke operations now or hereafter located along the tracks above described and to Raleigh Mine No. 3 (the mileage of said trackage amounting to approximately 11.62 miles), and also the right to transport over said tracks through business to and from points beyond Pemberton reached via the Virginian Railway and to and from points on the Piney River & Paint Creek Railroad.

2. As rental for the trackage rights in this article granted it, the Virginian Company agrees to pay the Chesapeake Company its proportionate part of a sum equal to five per cent per annum upon the value of all the tracks and facilities of the Chesapeake Company which are used by the Virginian Company, in equal monthly installments on or about the 20th day of each month for the preceding calendar month, such proportion of said sum to be determined upon the "cars handled" basis as hereinbefore defined; provided, however, that the Virginian Company shall in no case pay less than twenty-five (25) per cent of such sum per annum; and the Virginian Company will further pay one-half of all the taxes and insurance on the said tracks and facilities when and as bills for the same are rendered, provided, that at the end of the period covered by any such bill for taxes or insurance an adjustment of the amount of such bill shall be made on the basis of "cars handled" as hereinbefore defined and the said bill shall be divided between the parties hereto according to such adjustment.

3. For the purpose of this agreement the value of the Chesapeake Company's tracks and facilities as set forth above is hereby declared to be as follows, viz:

[fol.1294] Between Pemberton and Beckley Junction, including the wye at Raleigh Junction	\$241,699
Between Beckley Junction and Westwood	49,000
Between end of wye at West Raleigh and Mile Post 14, including Raleigh Mine No. 3	19,354
Total Valuation	\$310,053

4. The Virginian Company agrees to pay the Chesapeake Company its proportion of operating and maintaining the tracks and facilities which it uses upon the basis of "cars handled" as hereinbefore defined.

5. The Chesapeake Company agrees to maintain its tracks and facilities in good condition suitable for the service they are called upon to perform.

It shall have the right to make such permanent additions, extensions and improvements to its bridges, tracks and other facilities as in its judgment is proper and right.

Upon such permanent additions, extensions and improvements any part of which shall be used by the Virginian Company, the Virginian Company is to pay the Chesapeake Company, in monthly instalments as aforesaid, its proportion, as hereinbefore defined, of five (5) per cent. per annum upon the cost thereof, and of the taxes, insurance and expenses of operation, maintenance and repairs upon such additions, extensions and improvements, upon the basis of "cars handled" as hereinbefore defined, with a minimum as to the interest of twenty-five (25) per cent. as aforesaid.

6. Should the shipments over the Virginian Railway from any of the mines on that portion of the line of the Chesapeake Company between Beckley Junction and Westwood, or on the branch line extending from a junction with the Chesapeake Company's line near Mile Post 14 to Raleigh Mine No. 3, at any time become so diminished as to make the trackage rights to said mine or mines herein granted to the Virginian Company unprofitable to it, said trackage rights to said mine or mines and all of the obligations of the Virginian Company as to any payment on account thereof may, at the option of the Virginian Company, be cancelled upon sixty days' notice in writing by it to the Chesapeake Company.

[fol. 1295]

Article III

Virginian Trackage Granted Chesapeake Company

1. In addition to the rights granted in Article I hereof, the Virginian Company hereby grants to the Chesapeake Company trackage rights as follows, subject to the conditions, terms and limitations hereinafter set forth:

(a) From a point 1,600 feet north of the head-block at Bishop, along the main line of the Virginian Railway, to the head-block where the tracks leading to the Weirwood Mine leave the tracks of the Virginian Railway, a distance

of 9.11 miles, also to a connection with the White Oak Railway near Bishop, and included in the rights granted in this paragraph is the right to have access to all coal and coke operations now or hereafter located along the line of track in this paragraph above described.

In the event that the land upon which the Weirwood Mine is at present situated shall be hereafter developed by new openings upon or adjacent to the line of the Virginian Company and not more than two (2) miles east of Weirwood, the trackage rights described in this clause shall be extended to the head-block of the tracks connecting such new development with the main line of the Virginian Company, and the valuation hereinafter mentioned shall be increased accordingly.

In the event a "Y" connection is built near Silver Gap to connect the White Oak Railway with the Virginian Railway, the Chesapeake Company is to have the right to use the same or not as it may elect, but in the event that it elects to use the same, then it will pay for such use, including interest on the cost of the same, as herein provided.

(b) From a connection made by the Chesapeake Company with the Glenn-White Branch of the Virginian Company at or near Glenn-White Junction to the point where the tracks of the E. E. White Coal Company connect with the said Glenn-White Branch of the Virginian Company's railway, a distance of about one (1) mile; included in this trackage is to be access to all coal and coke operations now or hereafter located along the last above described track.

2. As rental for the trackage rights in this Article granted it, the Chesapeake Company agrees to pay the Virginian Company its proportionate part of a sum equal to five (5) per cent. per annum upon the value of all the tracks and facilities of the Virginian Company which are used by the [fol. 1296] Chesapeake Company, in equal monthly installments on or about the 20th day of each month for the preceding calendar month, such proportion of said sum to be determined upon the "cars handled" basis as hereinbefore defined; provided, however, that for the calendar year 1917 the Chesapeake Company shall pay fifteen per cent. (15%) of the interest upon the value of that portion of the line between Bishop and Weirwood as set forth in the next succeeding paragraph, but that thereafter said Ches-

peake Company shall in no case pay less than twenty-five per cent. (25%) of the interest upon the value of the tracks and facilities of the Virginian Company above referred to per annum; and the Chesapeake Company will further pay one-half of all the taxes and insurance on the said tracks and facilities when and as bills for the same are rendered; provided, that at the end of the period covered by any such bill for taxes or insurance an adjustment of the amount of such bill shall be made on the basis of "cars handled" as hereinbefore defined and the said bill shall be divided between the parties hereto according to such adjustment.

3. For the purpose of this agreement the value of the Virginian Company's tracks and facilities as set forth in the preceding paragraph is hereby declared to be as follows:

From a point 1,600 feet north of the head-block at Bishop along the main line of the Virginian Railway to the head-block where the tracks leading to the Weirwood Mine leave the traks of the Virginian Company, a distance of 9.11 miles main line, passing tracks and connection with W. O. R'y		\$650,087 00
The Glenn-White Branch		13,609 00
Total Valuation		<hr/> \$663,696 00

4. The Chesapeake Company agrees to pay the Virginian Company its proportion of operating and maintaining the tracks and facilities which it uses, upon the basis of "cars handled" as hereinbefore defined.

5. The Virginian Company agrees to maintain its tracks and facilities in good condition suitable for the services they are called upon to perform.

It shall have the right to make such permanent additions, extensions and improvements to its bridges, tracks and other facilities as in its judgment is proper and right.

[fol. 1297] Upon such permanent additions, extensions and improvements any part of which shall be used by the Chesapeake Company, the Chesapeake Company, is to pay the Virginian Company in monthly instalments as aforesaid.

its proportion, as hereinbefore defined, of five (5) per cent. per annum upon the cost thereof, and of the taxes, insurance and expenses of operation, maintenance and repairs upon such additions, extensions and improvements, upon the basis of "cars handled" as hereinbefore defined, with a minimum as to the interest of twenty-five (25) per cent, as aforesaid.

6. The Chesapeake Company shall have the right at any time to cancel the trackage rights in this Article III granted it by the Virginian Company, and its obligation to any payment on account thereof, upon sixty (60) days notice in writing to the Virginian Company.

Article IV

General Provisions.

1. With the exception of coal and coke, neither the Virginian Company nor the Chesapeake Company is to do any freight business to, from or between the stations located on the tracks, mentioned in Articles II and III hereof, over which said Companies, respectively, are granted trackage rights under this agreement. No restriction whatever is or shall be placed upon either of the Companies in the handling of coal and coke, or in operations over the tracks mentioned in Article I or to or from any station thereon.

2. Passenger train service and revenue, including mail and express, shall be adjusted from time to time between the parties hereto as conditions may arise and require, subject to arbitration as hereinafter provided.

3. All payments and settlements required to be made hereunder shall be promptly made as near the 20th of the month, for the preceding calendar month, as is practicable; and in order to avoid passing of unnecessary bills, and because it is considered that the service rendered by one road will be offset by similar services rendered by the other road, it is agreed that whenever the term "operating expenses" is referred to herein, it shall not include any portion of the salaries or expenses of general and division officers, clerks, train dispatchers, roadmasters, etc.; only bills for the services of agents, operators, track and bridge men, and jointly [fol. 1298] employed trainmen and enginemen, if any, and

other employes who may be stationed directly upon or along the tracks covered by this agreement, are to be included.

4. Passenger trains of both Companies shall have equal rights and have preference over all freight trains. In like manner freight trains of both Companies shall have equal rights, it being the true intent and meaning hereof that no discrimination shall be practiced in the movement of trains, but that the trains of each Company shall have fair and reasonable service.

5. The switches of all connections shall be kept closed and locked in accordance with rules prescribed by the Company owning the track; and each Company shall have supervision and control over its own tracks and keep them in good condition and repair, and the Company using said tracks under this agreement shall not by reason of any defect in the tracks, bridges or other structures, or the appliances or appurtenances connected therewith, or obstruction to the traffic caused by wrecks, the elements, or otherwise, or by reason of the failure or neglect of the Company owning the tracks to repair any such defect, or to remove any such obstruction, have or make any claim or demand for any loss, damage or injury whatsoever arising from such defect, neglect or failure. But in case the Company owning the track shall fail to repair any such defect or remove any such obstruction within a reasonable time after the using Company shall have given it written notice specifying the defect or obstruction and requesting that it be repaired, or removed, as the case may be, then the using Company shall have the right to make the necessary repairs or removals at the cost and expense of the owning Company.

6. The Company owning the tracks shall prescribe the time tables, rules and regulations governing the use of its tracks, and all such time tables, rules and regulations shall be fair and reasonable, and the expense of printing time tables shall in each instance be borne by the Company requesting a change in time.

7. If any employe of the using Company shall neglect or refuse to obey any rule established by the owning Company governing the use of its tracks, then such employe shall, upon written request of the chief operating officer of the

owning Company, be prohibited from running over or upon any of the tracks of the owning Company.

8. The books and accounts of each Company, so far as they relate to the bills to be rendered hereunder, shall be [fol. 1299] open at all reasonable times to the inspection of the properly authorized representative of the other Company.

9. All loaded cars are to be forwarded to destination over the route of the carrier party hereto furnishing the same.

10. In order to avoid duplication of switching at the various coal and coke operations, the mutual effort is to be made to work out plans by which one Company will do all the switching at given places both for itself and for the other Company, and this basis is to be worked out in a manner that will be fair and equitable to each of the parties hereto, and it is to be done by special agreement covering each particular case and at as near actual cost as can be determined, and no discrimination for or against either Company is to be practiced by the other.

Article V

Liability Between Each Other

1. In respect to liability for damage to or loss or destruction of property, personal injury or loss of life occurring in connection with the use of any of the tracks covered by this agreement, the following provisions shall apply as between the Chesapeake Company and the Virginian Company, herein referred to collectively as the Companies.

2. All men (except those employed on locomotives or cars by one only of the Companies) regularly or temporarily employed in connection with the construction, operation, maintenance, repair and renewal of said tracks, or appurtenances or appliances used in connection therewith, shall be deemed joint employees of the Companies.

3. Each of the Companies shall be liable for all damage to or loss or destruction of property, personal injury or loss of life which shall be caused by its locomotives or cars through the acts or omissions of its men or joint employees.

4. In the event of a collision between the locomotives or cars of the Companies, caused by the joint acts or omissions of their employes, or caused partially or wholly by the acts or omissions of a joint employe, each of the Companies shall sustain without indemnity all loss or damage to or destruction of its own locomotives and cars, and be liable for all property in its custody, and for all personal injury or loss of life to its own employes or to persons upon its locomotives or cars; and if there shall be any loss or damage to or destruction of property of any other party or any personal injury or loss of life to any other party or to a joint employe, or if the track, buildings, structures, appurtenances or appliances of the owning Company shall be damaged or destroyed, the Companies shall equally bear the amount that shall be paid in settlement of all claims of such other party, or joint employe, and the expense of making such repairs to or rebuilding of the track, buildings, appurtenances or appliances as shall be necessary by reason of such collision.

5. In the event of any loss or damage to or destruction of property of a third party by fire or otherwise, or in event of any personal injury to or loss of life of a third party or a joint employe, the responsibility for which cannot be determined with certainty, the Companies shall equally bear the amount that shall be paid in satisfaction of any judgment or decree of court, or otherwise, in settlement of any claim for such loss, damage, destruction, personal injury or loss of life.

6. If either of the Companies shall be compelled to pay any judgment, costs, or expenses, the whole or any part of which by the terms hereof should be borne by the other, then the Company so liable shall promptly reimburse the Company making the payment for the amount so paid.

7. In case of any suit or action against either of the Companies for any damage, loss or destruction, personal injury or loss of life for which the other Company shall be wholly liable hereunder, the Company against which suit or action shall have been brought may give the other notice of the pendency thereof, and thereupon and thereafter it shall be the duty of the Company so notified to take charge of the defense and conduct the same and pay all expenses thereof,

including attorneys' and counsel fees, and to pay or perform such judgment or decree as shall be rendered therein.

8. In case of any suit or action involving joint liability the Company against which suit or action shall have been brought shall give the other due notice of the pendency thereof.

Article VI

Arbitration

In case any difference shall arise between the parties hereto with respect to the rights, duties or obligations of any party or parties hereunder, said matter in dispute or [fol. 1301] the question upon which the parties hereto are unable to agree shall be submitted to a board of arbitration in the following manner:

The party desiring to present any question to arbitrators shall serve upon the other party a written notice containing a statement of the question or matter to be submitted and of its contention with respect to its or their rights, with appropriate reference to the clauses or provisions of this contract upon which its claims are based, and name therein the person selected as its arbitrator; and it shall be the duty of the other party hereto, within fifteen (15) days, to make answer thereto in writing and name an arbitrator and in event it does not do so the party serving such notice may select a second arbitrator, and the two thus named shall select a third; in the event that the two arbitrators selected by the parties, respectively, fail to agree on an umpire within fifteen (15) days after their appointment, then the said umpire may be named by the United States District Judge for the Eastern District of Virginia; reasonable notice shall be given to each party of the date of the hearing before the board of arbitrators chosen as hereinbefore set forth, a majority of whom may act in the matter in controversy and make report thereof in writing to the parties hereto, and their findings and award in the premises shall be final and binding, and the parties hereto hereby agree to and with each other that they will abide by and perform such award; the expense of such arbitration, including fees of the arbitrators, shall be borne by the parties hereto equally.

Pending settlement of the matter submitted for arbitration the relations and conduct of the parties towards each other shall continue pursuant to the provisions of this agreement and shall in no way be affected by such controversy.

Article VII

Duration

The period of this agreement shall be for ninety-nine (99) years, and thereafter subject to termination upon six months' notice in writing by either party to the other, provided that if either party hereto intends to let this agreement expire by limitation at the end of said ninety-nine (99) years, it shall give to the other six months' notice in writing of such intention.

[fol. 1302]

Article VIII

Restoration

Upon the termination of this agreement the Chesapeake Company shall be restored to and thereafter have exclusive possession of its tracks and other property in respect of which rights are hereby granted the Virginian Company, and the Virginian Company shall be restored to and thereafter have exclusive possession of its tracks and other property.

Article IX

Cancellation of Agreement of November 12, 1912

That certain agreement dated the 12th day of November, 1912, between the Chesapeake Company and the Virginian Company, providing for the joint use of the Piney River & Paint Creek Railroad and White Oak Railway and certain trackage rights over one another's lines as therein set forth, together with all existing working arrangements under said agreement of the 12th day of November, 1912, are hereby vacated and annulled.

Article X

Map

The map hereto attached marked "Map attached to Agreement between The Virginian Railway Company and

The Chesapeake & Ohio Railway Company, dated 1st day of Nov., 1917," is hereby made a part of this agreement, and reference is hereby made thereto for a full description of the various lines of railroad hereinabove referred to.

In witness whereof the parties hereto have hereunto caused their corporate names to be signed and their corporate seals to be affixed by their proper officers thereunto duly authorized.

The Chesapeake and Ohio Railway Company, by ———
———, President.

Attest: ———, Asst. Secretary.

Piney River & Paint Creek Railroad Company, by
———, President.

Attest: ———, Secretary.

The Virginian Railway Company, by ———,
President.

Attest: ———, Secretary.

[fol. 1304] STATE OF NEW YORK,
County of New York, to wit:

I, Henry F. Lohmeyer, a Notary Public in and for the County and State aforesaid, do certify that Geo. W. Stevens personally appeared before me in my said County, and being by me duly sworn, did depose and say that he is the President of The Chesapeake and Ohio Railway Company, one of the corporations described in the foregoing writing, bearing date the 1st day of November, 1917, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said Geo. W. Stevens acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this 31st day of December, 1917.

(Sgd.) Henry F. Lohmeyer, Notary Public. My commission expires Mar. 30, 1919. Notary Public, Kings County No. 133. Certificate filed in New York County No. 79. Kings County Register's No. 9037. New York County Register's No. 9120. Commission expires March 30, 1919. (Seal.)

STATE OF NEW YORK,
County of New York, to wit:

I, Henry F. Lohmeyer, a Notary Public in and for the County and State aforesaid, do certify that Robert H. Gross personally appeared before me in my said County, and being by me duly sworn, did depose and say that he is the President of the Piney River & Paint Creek Railroad Company, one of the corporations described in the foregoing writing, bearing date the 1st day of November, 1917, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said Robert H. Gross acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this 31st day of December, 1917.

(Sgd.) Henry F. Lohmeyer, Notary Public. My commission expires Mar. 30, 1919. Notary Public, Kings County No. 133. Certificate filed in New York County No. 79. Kings County Register's No. 9037. New York County Register's No. 9120. Commission expires March 30, 1919. (Seal.)

[fol. 1305] STATE OF NEW YORK,
County of New York, to wit:

I, Henry F. Lohmeyer, a Notary Public in and for the County and State aforesaid, do certify that C. W. Huntington personally appeared before me in my said County,

and being by me duly sworn, did depose and say that he is the President of The Virginiaian Railway Company, one of the corporations described in the foregoing writing, bearing date the 1st day of November, 1917, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that the said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said C. W. Huntington acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this 31st day of December, 1917.

(Sgd.) Henry F. Lohmeyer, Notary Public. My commission expires Mar. 30, 1919. Notary Public, Kings County No. 133. Certificate filed in New York County No. 79. Kings County Register's No. 9037. New York County Register's No. 9120. Commission expires March 30, 1919. (Seal.)

[fol. 1306] This agreement made this 19th day of April, 1917, between The New River Company, a corporation of the State of West Virginia, of the first part; The Virginian Railway Company, a corporation of the State of Virginia, of the second part, and The Chesapeake and Ohio Railway Company, a corporation of the State of Virginia, of the third part;

Witnesseth:

Whereas The New River Company owns or controls all of the stock of White Oak Railway Company, a corporation of the State of West Virginia, which owns a line of railroad extending from Oakwood and Carlisle, in Fayette County, to Lochgelly, in said County, including with spurs and side tracks 13.04 miles of track, and also owns a connecting line of railway extending from a point on its line first above mentioned at Duncan's Crossing, in said County, to a connection with the Virginian Railway near Bishop, in said County, including with spurs and side track 2.52 miles of track, and also its Price Hill Division, extending from a connection with the Chesapeake and Ohio Railway at

Price Hill Junction, in said County, to Price Hill, in Raleigh County, West Virginia, including with spurs and side tracks 3.80 miles of track, all as shown on the map hereto attached; and

Whereas The New River Company also owns or controls all of the stock of the Piney River & Paint Creek Railroad Company, a corporation of the State of West Virginia, which owns a line of railroad extending from Beckley Junction, a point of connection with the Chesapeake and Ohio Railway, in said County of Raleigh, to Prosperity, also in said County, including with spurs and side tracks 10.9 miles of track, all as shown on the map hereto attached; and

Whereas said The New River Company also owns, or is a large stockholder in corporations owning certain lands and mining operations thereon served by said White Oak Railway and Piney River & Paint Creek Railroad; and

Whereas The Virginian Railway Company and The Chesapeake and Ohio Railway Company, under and by virtue of a certain agreement dated the 12th day of November, 1912, have reciprocal trackage rights over the lines of railroad of the White Oak Railway Company and of the Piney River [fol. 1307] & Paint Creek Railroad Company, respectively, and also certain reciprocal trackage rights to and from points of junction affording access to said White Oak Railway and said Piney River & Paint Creek Railroad, all as set out in said last named agreement; and

Whereas, by Article VIII of said agreement, the period thereof is for five years (less one day as to the Piney River & Paint Creek sub-lease) from December 1, 1912, and thereafter subject to termination upon six months' notice in writing by either party to the other, provided that if either party thereto intends to let said agreement expire by limitation at the end of five years it shall give to the other six months' notice in writing of such intention, etc.;

Now, therefore, this agreement witnesseth: That, for and in consideration of the premises, and of the mutual promises, agreements, and undertakings each with the other as hereinafter set forth, The New River Company agrees—

(1) That it will, for the sum of two hundred and seventy thousand dollars (\$270,000), payable in cash upon the completion of the transactions set forth in this paragraph (1)

and in paragraph (2) hereof, sell and transfer unto The Chesapeake and Ohio Railway Company all of the stock of said Piney River & Paint Creek Railroad Company, free of all indebtedness and of all liens thereon; that at the time of said transfer there shall be vested in said Piney River & Paint Creek Railroad Company all of the ownership now vested in said Piney River & Paint Creek Railroad Company as to said railroad as now constructed and operated, its spurs, side tracks and depot grounds together with a right of way in perpetuity for said railroad, subject only to such exceptions, reservations, and rights in others as are hereinafter specified; and that a general warranty of said right of way easement, subject to said exceptions, reservations and rights, so far as applicable thereto, shall be given at said time by The New River Company.

(2) That the White Oak Railway Company will, for the sum of seventy-seven thousand five hundred dollars (\$77,500), payable in cash upon the completion of the transactions set forth in this paragraph (2) and in paragraph (1) hereof, sell and convey unto The Chesapeake and Ohio Railway Company all of the title and ownership now vested in the White Oak Railway Company in the Price Hill Division of said railroad, as now constructed and operated, its spurs, side tracks, and depot grounds, together with a right of way in perpetuity for said division of said railroad, with only such exceptions, reservations, [fol. 1308] and rights in others as are hereinafter specified, and with a general warranty of such right of way easement subject to said exceptions, reservations and rights so far as applicable thereto.

And the White Oak Railway Company will, for the sum of three hundred and seventy-nine thousand five hundred dollars (\$379,500), payable in cash upon the completion of the transactions set forth in this paragraph (2) and in paragraph (1) hereof, sell and convey unto The Virginian Railway Company all of the title and ownership now vested in it in said line of railway extending from Oakwood and Carlisle in Fayette County to Lochgelly, in said County, and in the connecting line of railway extending from the point on said line at Duncan's Crossing in said County to a connection of the Virginian Railway near Bishop, in said

County, as now constructed and operated, their spurs, side tracks, and depot grounds, together with a right of way in perpetuity for said lines, with only such exceptions, reservations, and rights in others as are hereinafter specified, and with a general warranty of such right of way easement subject only to said exceptions, reservations and rights so far as applicable thereto.

(3) There is to be excepted and reserved out of the properties conveyed under this agreement or the title of which is to be vested in the Piney River & Paint Creek Railroad Company at the time of the transfer of the stock of said company, and from each of said properties:

(a) All coal and minerals, including oil and gas, in and underlying said properties, with the right to mine and remove the same and to mine and remove coal and minerals, including oil and gas, from other properties through the same, except that no opening shall be made on the surface of the properties so conveyed or vested in the Piney River & Paint Creek Railroad Company and that all of said operations shall be so conducted as to maintain proper support for the surface of said properties, the railroad thereon, and all structures required for the operation thereof.

(b) Roadway crossings over said properties at necessary or convenient points and the right to cross said properties and the tracks thereon above grade with tramways, conduits, tipples, telephone, telegraph, and electric wires, and to penetrate and cross below grade with mining entries, ways, or tunnels, and with conduits, tubes, pipes, and wires, and maintain and use the same for all purposes, it being understood that all tramways, tipples, wires, mining entries, [fol. 1309] ways, tunnels, and conduits crossing said property above grade shall have at least twenty-two feet vertical clearances above the top of the rail of any track of the railway company upon said land and with supports so located as not to imperil or interfere with the safe or convenient operation of trains, that all wires crossing said tracks shall be protected and guarded in such reasonable manner as the chief engineer of the railway company shall prescribe, and that the location and plan of construction, erection or installation of every such roadway crossing, tram, conduit, tipple, wire crossing, mining entry, way, tunnel, tube or

pipe shall be submitted to said chief engineer before work upon the same is begun and shall be constructed and maintained in such manner as may reasonably be required by said chief engineer with a view to the safe and convenient operation of the railway. The rights hereby reserved and excepted are so reserved and excepted for the benefit of The New River Company and its subsidiary companies, their successors and assigns, and of the owners of the property abutting the railroads and of any property which may be joined up therewith, and the heirs, successors and assigns of said owners, with full right of alienation to others. It is understood and agreed that these exceptions, reservations, and rights may be confirmed by deed or deeds given by the White Oak Railway Company and the Piney River & Paint Creek Railroad Company prior to the transfer and conveyances provided for in this agreement but shall be operative whether so confirmed or not and shall be expressly excepted in the general warranties hereinbefore provided to be given.

There are also to be excepted from the conveyances herein provided to be given and from the property the title of which is now vested in the Piney River & Paint Creek Railroad Company, certain small tracts, rights or reservations which said tracts, rights and reservations have been enumerated in a schedule in writing signed by the parties, and there shall be conveyed and transferred to The Chesapeake and Ohio Railway Company the sidings at Scarbro, Wingrove and Beckley, without further considerations other than its agreement to maintain and operate the same.

(4) It is understood and agreed that the lease dated the 18th day of April, 1912 between the Piney River & Paint Creek Railroad Company and The Virginian Railway Company, an undivided one-half whereof was sublet unto The Chesapeake and Ohio Railway Company under the agreement dated the 12th day of November, 1912, between The Chesapeake and Ohio Railway Company and The Virginian [fol. 1310] Railway Company aforesaid, and the lease dated the 12th day of November, 1912, between White Oak Railway Company, The Virginian Railway Company and The Chesapeake and Ohio Railway Company, also referred to in said agreement dated the 12th day of November, 1912, between The Chesapeake and Ohio Railway Company and

The Virginian Railway Company, shall be vacated and determined upon the completion of the transactions set forth in paragraphs (1) and (2) hereof; all agreements by which side tracks have been constructed under the terms of said leases are assumed by the purchasers and as to said side tracks the purchasers take such title as has acquired without warranty.

(5) In consideration of the premises, The Virginian Railway Company and The Chesapeake and Ohio Railway Company hereby agree with The New River Company that they will respectively, contemporaneously with the completion of the transactions set forth in paragraphs (1) and (2) hereof, enter into, for a period of ninety-nine (99) years, the agreement, a copy whereof is hereto attached, and that they, to-wit: The Virginian Railway Company and The Chesapeake and Ohio Railway Company will respectively duly maintain and carry out the provisions of said agreement, each of said companies agreeing for itself only. And The Chesapeake and Ohio Railway Company doth also covenant and agree that the Piney River & Paint Creek Railroad Company will enter into and maintain and carry out the provisions of said agreement.

(6) This agreement is to be carried through as an entirety, the performance of no part being required unless all parts are performed by the parties; it is to be performed on or before — of —, 1917, unless the time is further extended by mutual agreement, and it is agreed that if on said date the titles vested in the Piney River & Paint Creek Railroad Company and the White Oak Railway Company are not such that the parties of the second and third parts are satisfied with the same, accompanied by the warranties hereinbefore stipulated to be given, this agreement shall be null and void without further obligation and without liability of any party under the same, and that the giving of transfers and deeds with such warranties accepted by the parties of the second and third parts shall constitute a performance and discharge of the obligations of The New River Company under this agreement. It is also further agreed that in so far as any corporate action by the parties [fol. 1311] of the second and third parts, or either of them, is necessary to complete a vesting of a title in them under the deeds to be given, the obligation as to such corporate

action is assumed by them respectively, and any warranty given in accordance with the terms of this agreement by the party of the first part or the White Oak Railway Company is not to be construed as covering any failure of title to vest arising from any failure on the part of the parties of the second and third parts, or either of them, to take such corporate action; also that if, after the conveyances have been made under this agreement, any defect of title develops which constitutes a breach of any warranty given, the grantors and The New River Company shall have the benefit of the exercise of the right of eminent domain by the parties of the second or third part or the Piney River & Paint Creek Railroad Company, as the case may be, in the curing of such defect.

(7) It is understood and agreed that this agreement is subject to the ratification of the respective boards of directors of the parties hereto and to the ratification of the respective boards of directors and stockholders of the White Oak Railway Company and the Piney River & Paint Creek Railroad Company, and the approval, formally or informally in a manner satisfactory to counsel, of the Interstate Commerce Commission, to which the same is to be submitted.

In witness whereof, the parties hereto have hereunto caused their corporate names to be signed and their corporate seals to be affixed by their proper officers thereunto duly authorized.

The New River Company, by (Sgd) Robert H. Gross,
President.

Attest: — — —, Secretary. [Seal.]

The Virginian Railway Company, by (Sgd.) C. W.
Huntington, President.

Attest: (Sgd.) Jas. Clarke, Secretary. [Seal.]

[fol. 1312] The Chesapeake and Ohio Railway Company,
by (Sgd.) Geo. W. Stevens, President

Attest: (Sgd.) Carl Remington, Secretary. [Seal.]

STATE OF NEW YORK,

County of New York, To wit:

I, Henry F. Lohmeyer, a Notary Public in and for the County and State aforesaid, do certify that Robert H. Gross personally appeared before me in my said County, and, being by me duly sworn, did depose and say that he is the President of the New River Company, one of the corporations described in the foregoing writing, bearing date the 19th day of April, 1917, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said Robert H. Gross acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this 19th day of April, 1917.

(Sdg.) Henry F. Lohmeyer, Notary Public, Kings County, No. 133. Certificate filed in New York County No. 79. Kings County Registers No. 9037. New York County Registers No. 9120. Commission expires March 30, 1919. (Seal.)

STATE OF NEW YORK,

County of New York, To wit:

I, Henry F. Lohmeyer, a Notary Public in and for the County and State aforesaid, do certify that C. W. Huntington personally appeared before me in my said County, and, being by me duly sworn, did depose and say that he is the President of the Virginian Railway Company, one of the corporations described in the foregoing writing, bearing date the 19th day of April, 1917, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said C. W. Huntington acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this 19th day of April, 1917.

(Sdg.) Henry F. Lohmeyer, Notary Public, Kings County, No. 133. Certificate filed in New York County No. 79. Kings County Registers No. 9037. New York County Registers No. 9120. Commission expires March 30, 1919. (Seal.)

STATE OF NEW YORK,

County of New York, To wit:

I, Henry F. Lohmeyer, a Notary Public in and for the County and State aforesaid, do certify that Geo. W. Stevens personally appeared before me in my said County, and, being by me duly sworn, did depose and say that he is the President of the Chesapeake and Ohio Railway Company, one of the corporations described in the foregoing writing, bearing date the 19th day of April, 1917, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said Geo. W. Stevens acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this 19th day of April 1917.

(Sdg.) Henry F. Lohmeyer, Notary Public, Kings County, No. 133. Certificate filed in New York County No. 79. Kings County Registers No. 9037. New York County Registers No. 9120. Commission expires March 30, 1919. (Seal.)

[fol. 1314] Schedule referred to in agreement dated April 19, 1917, between The New River Company, The Virginian Railway Company and The Chesapeake and Ohio Railway Company, constituting a part of said agreement, of tracts, rights and reservations, based on existing conditions, excepted from the conveyances to be given under said agreement, or from the property of the Piney River & Paint Creek Railroad Company, in addition to general exceptions and reservations specified in Section 3 of said agreement, and with the right in The New River Com-

pany to have conveyances made thereof to it or any of its operating subsidiary companies and their successors or assigns.

(a) Exceptions and Reservations from the Properties of the Piney River & Paint Creek Railroad Company

In addition to the general reservations and exceptions referred to in the agreement dated April 19, 1917, there are preserved and reaffirmed all of the reservations and exceptions to the Cranberry Land Company and Cranberry Fuel Company specified in the deed of said Cranberry Land Company and Cranberry Fuel Company to the Piney River & Paint Creek Railroad Company, dated May 11, 1908, and recorded in Deed Book 41, page 395, in the Clerk's office of Raleigh County, West Virginia, both as applying to present structures and conditions and to the future. Also real estate situated in East Wickham and the town of Mabscott shown on Plan 280 G-2, dated 6-22-1904, prepared by the Engineering Department of The New River Company.

There is, however, to be conveyed to the Piney River & Paint Creek Railroad Company the tipple and loading tracks included in the exceptions in said conveyance from the Cranberry Land Company and Cranberry Fuel Company, and the reservations and exceptions hereby preserved do not include said tracks.

(b) Exceptions and Reservations from Beckley Siding

In the conveyance of the Beckley siding there is to be excepted the Beckley tipple and reserved by an agreement in the phraseology of the form hereto annexed and marked "Form 3," the right to maintain and use said tipple and the land appurtenant thereto to a width of 100 feet centering at station 9+48 of the center line of said siding and other rights in connection therewith, all as specified in said form, and there is also to be reserved two road crossings at points which are shown in Plan No. 133-B1 of the Engineering Department of The New River Company, dated 12-6-16, to which reference is hereby made by the parties.

[fol. 1315] (c) Exceptions and Reservations from White Oak Railway, Price Hill Division

There is to be excluded from the conveyance of the Price Hill Division by the White Oak Railway the Sherwood shaft and a portion of land around same, all as shown on Plan 108-G, dated 6-6-16, prepared by the Engineering Department of The New River Company; and there is also to be excepted and reserved the Sherwood tippie, with the right to maintain and use said tippie, and the land appurtenant thereto to a width of 100 feet centering on the center line of the Sherwood tippie, and other rights in connection therewith, all to be reserved in the phraseology of the form hereto annexed marked "Form 3."

(d) Exceptions and Reservations from Scarbro and Wingrove Sidings

The Scarbro tippie, with the right to maintain and use said tippie and the land appurtenant thereto to a width of 100 feet centering at station 29+80 of the Scarbro siding, and other rights in connection therewith, all to be reserved in the phraseology of the form hereto annexed marked "Form 3."

The Wingrove tippie, with the right to maintain and use said tippie and the land appurtenant thereto to a width of 100 feet centering at station 22+55 of the Wingrove siding, and other rights in connection therewith, all to be reserved in the phraseology of the form hereto annexed marked "Form 3."

Four road crossings, as shown on Plan 133-B-1, dated 12 6-16, being crossings 36 to 39, inclusive, and one road crossing, being crossing x-40, shown on Plan 322-B-2, dated 12 6-16, of the Engineering Department of The New River Company.

(e) White Oak Railway, Wolf Creek Branch, Exceptions, etc.

Oakwood, Carlisle, Summerlee and Lochgelly tipples to be reserved, with rights to be reserved by agreements in the phraseology of the form hereto annexed marked "Form

3, with the right to maintain and use said tipples and the land appurtenant thereto to a width of 100 feet, and other rights in connection therewith, all as specified in said form, said 100 feet in the case of said tipples to be, respectively, as follows:

Oakwood tipple—center line of said 100 foot strip is to center on the center line of the Oakwood shaft and extend across the right of way of the Carlisle-Oakwood yard;

Carlisle tipple—center line of said 100 foot strip is to center on the center line of the Carlisle shaft and extend [fol. 1316] across the right of way of the Carlisle-Oakwood yard.

Summerlee tipple—center line of said 100 foot strip is to center at station 252+25.4 of the center line of Summerlee siding of the Wolf Creek Branch of the White Oak Railway;

Lochgelly tipple—center line of said 100 foot strip is to center at station 345+02.5 of the center of the Wolf Creek Branch of the White Oak Railway.

Oakwood shaft—a portion of the right of way to be excluded from the conveyance thereof, being the Oakwood shaft and land surrounding the same, bounded as follows: Beginning at a point on the center line of the shaft on the line of the White Oak Fuel Company; thence running north $16^{\circ} 36'$ west 30 feet; thence running at right angles to the line of the right of way south $73^{\circ} 24'$ west 45 feet; thence running parallel with the right of way line south $16^{\circ} 36'$ east 60 feet, passing the center line of the shaft at 30 feet; thence running at right angles to the line of the right of way north $73^{\circ} 24'$ east 45 feet to the White Oak Fuel Company's line; thence with said line north $16^{\circ} 36'$ west 30 feet to the point of beginning, together with all structures thereon.

Oakwood Supply House, Sand House, Fan and Air-duct and other structures, with the rights in the following land, to be reserved in the phraseology of Form No 2 hereto annexed: Beginning on the line of the White Oak Fuel Company at a point south $16^{\circ} 36'$ east distant 200 feet from the center line of the Oakwood shaft; thence running with said line of the White Oak Fuel Company north $16^{\circ} 36'$ west 450 feet to a stake in said line; thence running at right angles to said line south $73^{\circ} 24'$ west 45 feet to a stake; thence parallel with line of the right of way south $16^{\circ} 36'$ east 450

feet to a stake; thence running at right angles to the line of the right of way north $73^{\circ} 24'$ east 45 feet to the point of beginning, excepting, however, from this area the land surround the Oakwood shaft heretofore specified to be absolutely excepted and with the reservations and rights hereinbefore specified for the Oakwood tippie.

Oakwood Powder House, with the rights in the following land, to be reserved in the phraseology of Form No. 1 hereto annexed: Beginning at a point in the line of the White Oak Fuel Company south 35° east 50 feet from the center line of said powder house; thence running north 35° west 100 feet to a stake; thence turning at right angles and running south 55° west 30 feet to a stake; thence running parallel with the line of the right of way south 35° east 100 [f.d. 1317] feet to a stake; thence turning at right angles and running north 55° east 30 feet to the point of beginning.

Oakwood, Dwelling Houses Nos. 112 and 113, with the rights in the following land, to be reserved in the phraseology of Form No. 1 hereto annexed: Beginning at a point on the line of the White Oak Fuel Company 25 feet south $26^{\circ} 50'$ east from the southeasterly corner of house No. 112; thence running north $26^{\circ} 50'$ west by said line of the White Oak Fuel Company 200 feet to a stake; thence turning at right angles and running north $63^{\circ} 10'$ east 25 feet to a stake; thence turning and running parallel with the line of said right of way south $26^{\circ} 50'$ east 200 feet to a stake; thence turning and running at right angles to the line of said right of way south $63^{\circ} 10'$ west 25 feet to the point of beginning.

Oakwood Stable and Harness Shop, with the rights in the following land, to be reserved in the phraseology of Form No. 1 hereto annexed: Beginning at a point in the line of the White Oak Fuel Company 30 feet south $26^{\circ} 50'$ east from the southeasterly corner of the stable; thence running by said line of the White Oak Fuel Company north $26^{\circ} 50'$ west 200 feet to a stake; thence turning at right angles and running south $63^{\circ} 10'$ west 30 feet to a stake; thence turning and running parallel with the line of said right of way south $26^{\circ} 50'$ west 200 feet to a stake; thence turning and running at right angles to said line of said right of way north $63^{\circ} 10'$ east 30 feet to the point of beginning.

Carlisle Store and Ice House, with the rights in the fol-

lowing land, to be reserved in the phraseology of Form No. 2 hereto annexed: Beginning at a point in the line of the White Oak Fuel Company north $62^{\circ} 30'$ west 245 feet from the point of the switch Wolf Creek Branch; thence north $62^{\circ} 30'$ west 200 feet to a stake; thence turning at right angles to said property line of the White Oak Fuel Company south $27^{\circ} 30'$ west 43 feet to a stake; thence turning at right angles and running parallel to said right of way line south $62^{\circ} 30'$ east 200 feet to a stake; thence turning at right angles and running north $27^{\circ} 30'$ west 43 feet to the point of beginning.

Carlisle Oil House, Feed House, Machine Shop and Supply House with the rights in the following land, to be reserved in the phraseology of Form No. 2: Beginning at a point in the line of the White Oak Fuel Company opposite the point of switch of Wolf Creek Branch; thence with said line of the White Oak Fuel Company north $65^{\circ} 30'$ west 666 feet to a stake; north $87^{\circ} 15'$ west 100 feet to a stake; thence through the lands of the said White Oak [fol. 1318] Fuel Company south $65^{\circ} 30'$ east 425 feet to a stake, south $71^{\circ} 30'$ east 335 feet, more or less, to the point of beginning.

Lochgelly Store, Supply and Ice House, with the rights in the following land, to be reserved in the phraseology of Form No. 2: Beginning at a point opposite to and 50 feet to the left of station 334 + 92.1 of the Wolf Creek Branch of the White Oak Railway; thence with the right of way line to a point opposite to and 50 feet to the left of station 338 + 42.1; thence turning at right angles to said right of way line and running north $81^{\circ} 25'$ east 40 feet to a point opposite to and 10 feet to the left of said station 338 + 42.1; thence turning at right angles and running parallel to the center line of said railway to a point opposite to and 10 feet from station 334 + 92.1; thence turning at right angles to said center line and running south $81^{\circ} 25'$ west 40 feet to the point of beginning.

Tracts of Real Estate.—The following tracts of real estate shown on Plan 119-G, dated 12-9-16, prepared by the Engineering Department of The New River Company, are excepted and excluded, viz.: Tracts No. 11, 12 and 12-A, being portions of the eighty-acre Price Heirs tract, extending from Whipple Hill to Duncan's Crossing, out of

which, however, a right of way for railroad purposes 100 feet wide is to be included in the conveyance to The Virginian Railway Company, together with the right to take and occupy for such railroad right of way such additional land as may be required for the slopes of cuts and fills in the construction and operation of said railway along said right of way with its tracks, including side tracks, passing tracks and switches.

The New River Company, by its Attorney, A. C. Burnham. The Virginian Railway Company, by E. W. Knight, General Counsel. The Chesapeake and Ohio Railway Company, by H. T. Wickham, Vice-Pres. and General Counsel.

[fol. 1319]

Form No. 1

This deed and agreement made this — day of —, 1917, between the White Oak Railway Company, a corporation organized under the laws of the State of West Virginia, party of the first part, and — —, a corporation organized under the laws of the State of West Virginia, party of the second part,

Witnesseth:

That said party of the first part, for and in consideration of the sum of one dollar and other good and valuable considerations to it paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the party of the second part, its successors and assigns, the right to maintain and use on the tract of land herein-after described, so long as the grantee or its successors or assigns may find such maintenance and use necessary or convenient in connection with the present or future operation or development for coal mining purposes of properties owned, leased or operated by it or them, the building now located on said tract, with the right to repair, alter and enlarge said building, said tract of land being as follows:

A certain tract of land in —, in the County of — and State of West Virginia, bound: —.

Provided, that whenever the maintenance and use of said building shall no longer be found to be necessary or con-

venient for the purposes and in the manner hereinbefore stated or if said building shall be destroyed or so damaged as to require substantially to be rebuilt, the grantee, its successors or assigns shall remove the same or the remains thereof from said land and all of its, or their, rights hereunder shall cease and determine, and all right, title and interest conveyed hereby to the party of the second part shall revert to and revest in the party of the first part, its successors or assigns.

[fol. 1220] And, in consideration of this grant, the party of the second part agrees with the party of the first part that there shall be no liability of the party of the first part to the party of the second part, its successors or assigns, for any damage or injury to any building or property of the party of the second part, its successors or assigns, on the described premises resulting from the operation by the party of the first part, its successors or assigns of its or their railroad or trains, whether caused by negligence of its or their agents, servants, employees or officers or otherwise; and the party of the second part further agrees with the party of the first part that it will pay, indemnify and save harmless the party of the first part, its successors and assigns from all taxes and assessments which may be levied on or on account of said land and the buildings or structures maintained thereon.

In witness whereof, the said parties have caused their corporate names to be signed and their corporate seals to be affixed by the hands of their respective Presidents or Vice-Presidents duly authorized hereunto and to a duplicate instrument the day and year first above written.

White Oak Railway Company, by — —.

STATE OF —,

County of —, To wit:

I, — —, a Notary of the said County of —, do certify that — —, whose name is signed to the writing hereto annexed, bearing date the — day of —, 1917, this day personally appeared before me in my County aforesaid, and being by me duly sworn did depose and say that he is the President of the White Oak Railway Company, authorized by said corporation to execute and acknowledge

deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said — — this day acknowledged the [fol. 1321] said writing to be the act and deed of said corporation.

My commission expires on the — day of —, 191-.

Given under my hand and official seal this — day of —, 1917.

— —, Notary Public.

(Or Piney River & Paint Creek Railroad as grantor.)

[fol. 1322]

Form 2

This deed and Agreement, made this — day of —, 1917, between White Oak Railway Company, a corporation organized under the laws of the State of West Virginia, party of the first part, and — —, a corporation organized under the laws of the State of West Virginia, party of the second part,

Witnesseth:

That said party of the first part, for and in consideration of the sum of one dollar and other good and valuable considerations to it paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the party of the second part, its successors and assigns, the right to maintain and use on the tract of land hereinafter described, so long as the grantee or its successors or assigns may find such maintenance and use necessary or convenient in connection with the present or future operation or development for coal mining purposes of properties owned, leased or operated by it or them, the building now located on said tract, with the right to repair, alter and enlarge and, in case of destruction, reconstruct said building, with the same rights with reference to said reconstructed building; said tract of land being as follows:

A certain tract of land in —, in the County of — and State of West Virginia, bounded: —.

Provided, that whenever the maintenance and use of said building shall no longer be found to be necessary or con-

venient for the purposes and in the manner hereinbefore stated, the grantee, its successors or assigns shall remove the same or the remains thereof from said land and all of its, or their, rights hereunder shall cease and determine, and all right, title and interest conveyed hereby to the party of the second part shall revert to and revert to and revest in the party of the first part, its successors or assigns. And, in consideration of this grant, the party of the [fol. 1323] second part agrees with the party of the first part that there shall be no liability of the party of the first part to the party of the second part, its successors or assigns, for any damage or injury to any building or property of the party of the second part, its successors or assigns, on the described premises resulting from the operation by the party of the first part, its successors or assigns of its or their railroad or trains, whether caused by negligence of its or their agents, servants, employees or officers or otherwise; and the party of the second part further agrees with the party of the first part that it will pay, indemnify and save harmless the party of the first part, its successors and assigns from all taxes and assessments which may be levied on or on account of said land and the buildings or structures maintained thereon.

In Witness whereof, the said parties have caused their corporate names to be signed and their corporate seals to be affixed by the hands of their respective Presidents or Vice-Presidents duly authorized hereunto and to a duplicate instrument the day and year first above written.

White Oak Railway Company, by — —.

STATE OF — —,

County of — —, To wit:

I, — — —, a Notary of the said County of — —, do certify that — — —, whose name is signed to the writing hereto annexed, bearing date the — day of — —, 1917, this day personally appeared before me in my County aforesaid, and being by me duly sworn did depose and say that he is the President of the White Oak Railway Company, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that the said writing was signed and sealed

by him in behalf of said corporation by its authority duly given. And the said ——— this day acknowledged the said writing to be the act and deed of said corporation.

[fol. 1324] My commission expires on the — day of —, 191—.

Given under my hand and official seal this — day of —, 1917.

—— —, Notary Public.

(Or Piney River & Paint Creek Railroad Company a grantor)

[fol. 1325]

Form No. 3

This deed and Agreement made this — day of —, 1917, between ———, a corporation organized under the laws of the State of West Virginia, party of the first part, and ———, a corporation organized under the laws of the State of West Virginia, party of the second part,

Witnesseth:

That said party of the first part, for and in consideration of the sum of one dollar and other good and valuable considerations to it paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the party of the second part, its successors and assigns, the right to maintain and use a coal tippie upon and across the right of way of the grantor at the location hereinafter described so long as the grantee or its successors or assigns may find it necessary or convenient in connection with the present or future operation or development for coal mining purposes owned, leased or operated by it or them, with the right to repair, alter, enlarge or, in case of destruction reconstruct said tippie; all subject to the restrictions hereinafter specified, said location of land being as follows:

Said tippie shall have at least twenty-two feet vertical clearance above the top of the rail of the railway and shall have supports so located as not to imperil or interfere with the safe or convenient operation of trains and shall be maintained in such a manner as may reasonably be required by the chief engineer of the grantor with a view to the safe and convenient operations of trains.

And the party of the second part further agrees with the party of the first part that it will pay, indemnify and save harmless the party of the first part, its successors and assigns from all taxes and assessments which may be levied on or on account of said land and the buildings and structures maintained thereon, and that it will remove said [fol. 1326] tipple or the remains thereof when it is no longer necessary or convenient to use the same.

In witness whereof, the said parties have caused their corporate names to be signed and their corporate seals to be affixed by the hands of their Presidents or Vice-Presidents duly authorized hereunto and to a duplicate instrument the day and year first above written.

STATE OF ———,

County of ———, To wit:

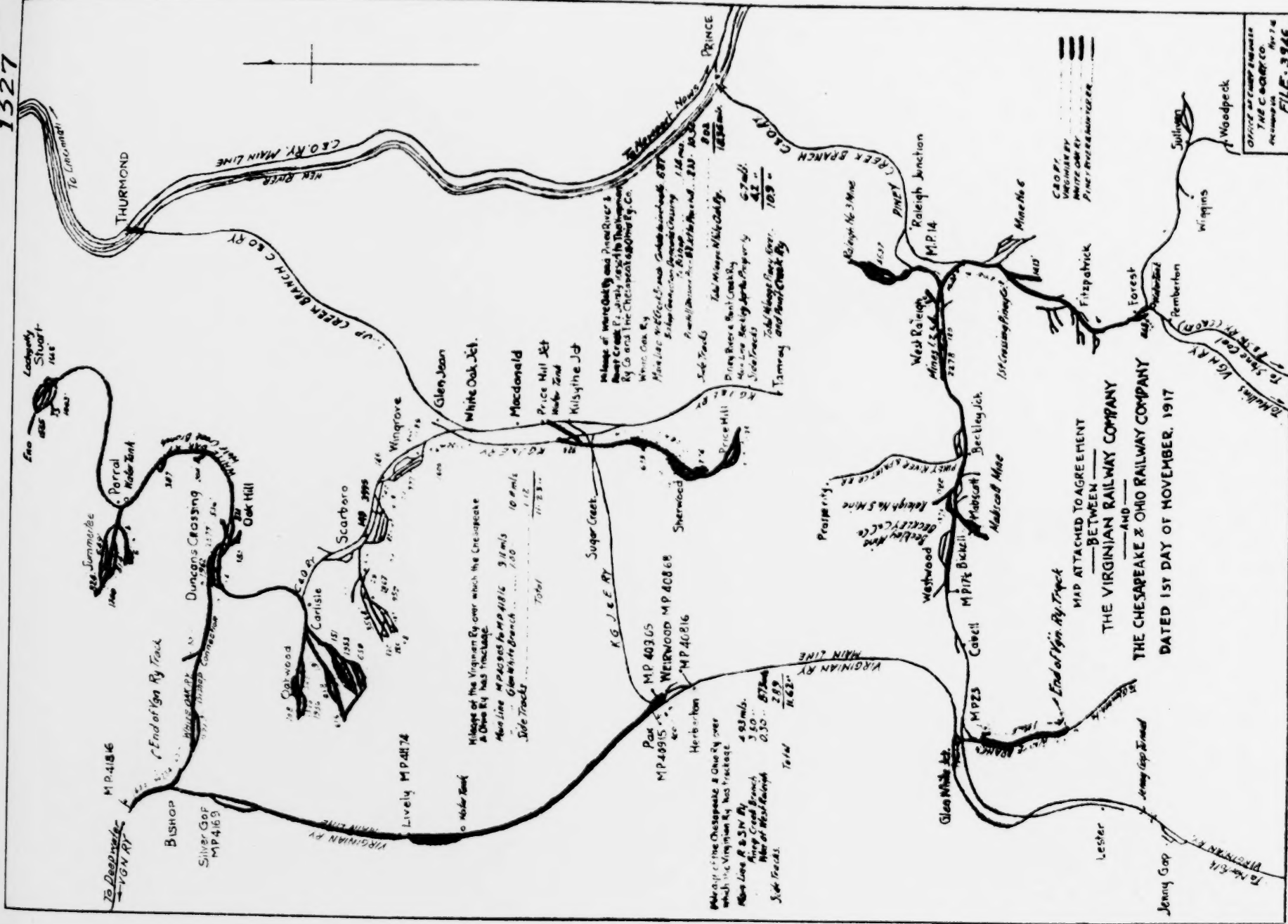
I, ———, a Notary of the said County of ———, do certify that ———, whose name is signed to the writing hereto annexed, bearing date the — day of ———, 1917, this day personally appeared before me in my County aforesaid, and being by me duly sworn did depose and say that he is the President of ———, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said ——— this day acknowledged the said writing to be the act and deed of said corporation.

My commission expires on the — day of ———, 191—.

Given under my hand and official seal this — day of ———, 1917.

————, Notary Public.

(Here follow map, side folio 1327, and Exhibit 36, map of portion of Kanawha, New River, and Pocahontas coal districts, side folio page 1328)



OFFICE OF THE ENGINEER
THE CHESAPEAKE & OHIO RAILWAY COMPANY
NOV 17 1917
FILE 3946

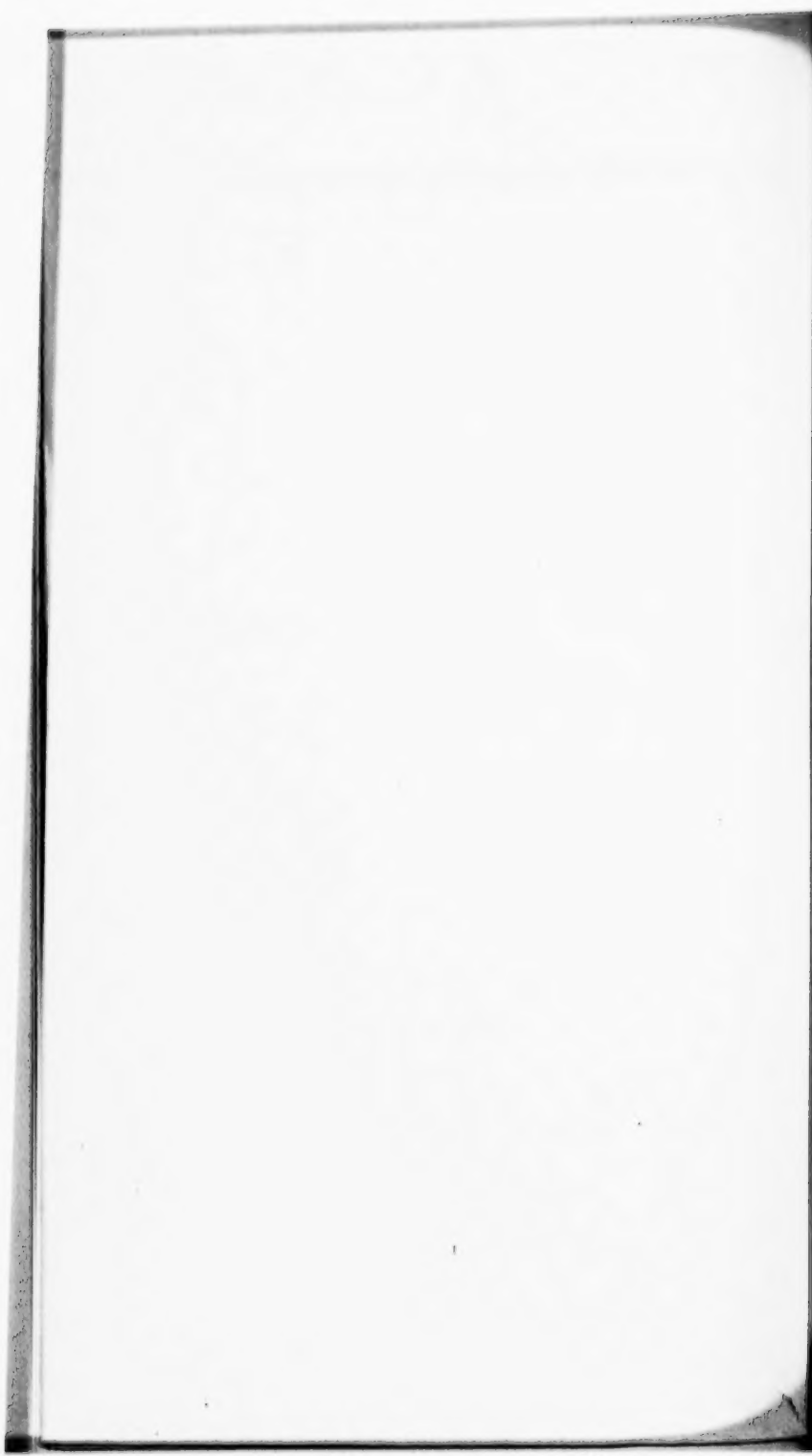
MAPS

TOO

LARGE

FOR

FILMING



[fol. 1329]

EXHIBIT 37

INTERSTATE COMMERCE COMMISSION

Docket No. 13832

Witness, Adsit. Date, Nov. 14, 1922

Agreement Between the Virginian Railway Company & the Chesapeake and Ohio Railway Co., Dated May 10th, 1915. The Operation of Portion of Stone Coal Branch & a Portion of Tommy Creek Branch of The Virginian Ry.

Mr. Raymond Du Puy, President Virginian Railway, Norfolk, Va.

DEAR SIR: Referring to your letter of the 2nd with regard to further extension of the Stone Coal Branch to reach and operate the mine tracks of the Lillybrook Coal Company and the Princewick Coal Company, including Wye track, as indicated on blueprint enclosed with your letter, from "P" to "Q" and "R" to "S".

This is to advise the Chesapeake & Ohio Railway will exercise its rights in this extension, in accordance with Paragraph (a), Article 5 of the agreement between our respective Companies, dated May 10th, 1915.

Very truly yours, (S.) Geo. W. Stevens, President.

[fol. 1330]

Copy

The Chesapeake & Ohio Railway Company, Richmond, Va.

June 10th, 1915.

Mr. Raymond Du Puy, President Virginian Railway, Norfolk, Virginia.

DEAR SIR: Your letter of May 12th relative to the proposed construction of a spur track from the junction of the Stone Coal Branch near the mouth of Riffes Branch, up Riffes Branch and Bee Tree Creek to the East Gulf Coal Company's operation, a distance of 1.12 miles—

The Chesapeake & Ohio desires to exercise its rights in this proposed extension, in accordance with Paragraph

(a), Article 5 of the agreement between our Companies dated May 10th, 1915.

Very truly yours, (S.) Geo. W. Stevens, President.

[fol. 1331]

Copy

The Chesapeake & Ohio Railway Company, Richmond, Va.

At New York, June 1st, 1916.

Mr. Raymond Du Puy, President Virginian Railway, Norfolk, Virginia.

DEAR SIR: Referring to your letter of the 12th giving formal notice of the Virginian Railway Company's intention to begin construction of a proposed extension of its Stone Coal Branch up Laurel Fork, a distance of 2.34 miles, to reach certain proposed coal operations—

This is to advise that the Chesapeake & Ohio will exercise its rights in this proposed extension, in accordance with Paragraph (a), Article 5 of agreement between our respective companies dated May 10th, 1915, and will therefore accept bill covering the interest charge of three per cent on \$80,000.00, or \$2,400.00 per annum.

Very truly yours, (S.) Geo. W. Stevens, President.

[fol. 1332]

Copy

The Chesapeake & Ohio Railway Company, Richmond, Va.

At White Sulphur, April 1st, 1916.

Mr. Raymond Du Puy, President Virginian Railway, Norfolk, Virginia.

DEAR SIR: Your letter of March 17th received. The side track agreement referred to is satisfactory to this Company, and it will accept bills for its proportion of the interest on the valuation of the rails, frogs and switches that are furnished by the Railway Company in putting in mine tracks on the Stone Coal and Tommy Creek lines, and will also pay its proportion of the maintenance.

Very truly yours, (S.) Geo. W. Stevens, President.

[fol. 1333]

Copy

The Chesapeake & Ohio Railway Company, Richmond, Va.

February 19th, 1916.

Mr. Raymond Du Puy, President Virginian Railway, Norfolk, Virginia.

DEAR SIR: This is to advise you that our Board of Directors at their meeting on Thursday, the 17th, approved of the arrangement covering the construction of Farley's Branch of the Stone Coal Creek Line.

Very truly yours, (S.) Geo. W. Stevens, President.

[fol. 1334]

Copy

This is to certify that at a meeting of the Board of Directors of The Virginian Railway Company, duly held pursuant to notice at No. 55 Wall Street, New York City, on July 6th, 1915, at which meeting a quorum was present, there was submitted to the meeting an agreement bearing date May 10th, 1915, between The Virginian Railway Company of the first part, and The Chesapeake and Ohio Railway Company of the second part, which had been executed by the latter Company.

Upon motion duly seconded, it was unanimously

Resolved: That the terms of said Agreement be approved and that the President and Secretary be authorized to execute and deliver same for and on behalf of this Company.

(S.) Jas. Clarke, Secretary.

New York, July 6th, 1915.

[fol. 1335] This agreement, made this tenth (10th) day of May, 1915, between The Virginian Railway Company, a corporation of Virginia (hereinafter called the "Virginian Company"), of the first part, and The Chesapeake and Ohio Railway Company, a corporation of Virginia (hereinafter called the "Chesapeake Company"), of the second part:

Whereas the Virginian Company has located branches or extensions of its Winding Gulf Branch line in West Vir-

ginia up Stone Coal Creek and waters thereof and up Tommy Creek and waters thereof, and at the present time proposes to build and extend in Raleigh County, West Virginia, the branch or extension up Stone Coal Creek, from the mouth thereof to station 331/50, a distance of about six and two-tenths (6.2) miles, as shown by the line A B C D E F G H K L upon the map hereto attached and made part hereof, marked "Map showing Lower Stone Coal Branch, a portion of Stone Coal Branch and a portion of Tommy Creek Branch of the Virginian Railway," and may hereafter build extensions or branches of said extension or branch farther up Stone Coal Creek and up and on Tommy Creek and on other tributaries of Stone Coal or Tommy Creek; and the Chesapeake Company desires the right to use the extension or branch now proposed to be built from the point of its connection therewith, and may desire the right to use such extensions or branches as may hereafter be built, or one or more of them, which rights the Virginian Company is willing to grant under the terms and conditions herein set forth; and the Chesapeake Company may desire to build extensions or branches of the extension or branch now proposed to be built farther up Stone Coal Creek and up and on Tommy Creek and on other tributaries [fol. 1336] of Stone Coal or Tommy Creek, with the right to the Virginian Company to use the same, or one or more of them, upon the terms and conditions herein set forth;

Now, therefore, this agreement witnesseth: That for and in consideration of the mutual benefits to be received by the parties hereto, respectively, and of the convenience and interest of the public to be served by the construction of the said branch railroad, extensions, branches, etc., as above indicated, and especially for and in consideration of the mutual agreements made by the parties hereto each with the other, respectively, as hereinafter set forth, said parties hereby stipulate, covenant and agree each with the other as follows:

1. The Virginian Company hereby agrees that it will, at its own cost and expense, acquire the necessary right of way from the point of connection hereinabove referred to of the Chesapeake Company to the end of the track now to be built as aforesaid, and construct thereon, with all rea-

sonable dispatch, a standard gauge railroad, with all necessary structures, and facilities, including a station, side track, and water tank if needed.

2. The Virginian Company covenants and agrees that the Chesapeake Company shall have the right to make physical connection with said branch now proposed to be built as aforesaid near the junction of Stone Coal and Winding Gulf Creeks, near the point designated by the letter B shown on said map hereto attached above referred to, and to the equal use in all respects with the Virginian Company of said line of railroad, structures, appurtenances, appliances and facilities, when constructed from said point of connection above referred to to the eastern terminus of the same, as shown on said map, subject to the terms, conditions and limitations hereinafter set forth.

3. In consideration of the right of user as aforesaid, the Chesapeake Company agrees to pay the Virginian Company, (a) interest at the rate of three (3) per cent, per annum, payable semi-annually, on April 1st and October 1st in each year, upon the amount, from time to time, of the total cost of the said branch from the point of connection of the Chesapeake Company therewith to the said proposed present eastern terminus thereof, the said interest to run from the date of expenditure of each sum going toward the said cost by the Virginian Company: (b) one-half of the taxes paid by the Virginian Company upon that portion of the said branch between the connection of the Chesapeake Company therewith and the said proposed eastern terminus thereof (Federal income taxes and State franchise, income or taxes upon earnings excepted), payable when paid by the Virginian Company.

4. In addition to the amounts to be paid as hereinbefore provided for the right of equal user aforesaid, the Chesapeake Company agrees to pay the Virginian Company its proper share of the cost of maintaining and operating the said line, structures, appurtenances, appliances, facilities and property jointly used, said sum to be determined by the proportion which the car mileage for each month, from time to time, of the Chesapeake Company on said jointly used property as aforesaid bears to the entire car mileage for

such month on the same, and in ascertaining said car mileage it is agreed that all cars are to be counted, whether loaded or empty, a locomotive or caboose to be counted as a car, but velocipede, hand or push cars not to be counted.

[fol. 1338] 5. (a) If the Virginian Company shall construct any extension or branch of the said branch now to be built by it as aforesaid, on Stone Coal Creek or on Tommy Creek or on any tributary of either of said creeks, it shall, at or before the time of beginning the construction of such branch or extension, notify the Chesapeake Company of its intention so to do; and the Chesapeake Company shall have the right, within a period of three (3) months from the receipt of such notice, to elect to use and to have equal rights over and upon such branch or extension for the remainder of the period of this agreement, on the same terms and conditions as to consideration for said right of equal user and the sharing of maintenance and operating expense as in the case of the right of user hereinbefore given it.

(b) If the Chesapeake Company shall desire the construction of any extension or branch as contemplated in paragraph (a) of this Article 5 above set forth, it shall give to the Virginian Company sixty (60) days' notice in writing of such desire; and if the Virginian Company within said period of sixty (60) days shall give notice in writing to the Chesapeake Company of its intention to construct such extension or branch it shall proceed as quickly as practicable with the construction of the same, and the rights and obligations of the parties hereto in respect to such extension or branch shall be the same as if the same had been constructed under the provisions of said paragraph (a) and the Chesapeake Company had elected as therein provided to use and have equal rights upon and over same. But if the Virginian Company shall not elect within said period to construct said branch or extension the Chesapeake Company may construct the same, and in such case it shall at or before the beginning the construction thereof give notice in writing to the Virginian Company of its intention so to do; and the Virginian Company shall have the right within a period of three (3) months from the receipt of such notice to elect to use and have equal rights over and upon such branch or extension for the remainder of the period

of this agreement on the same terms and conditions as to consideration for said right of equal user and the sharing of maintenance and operating expense as in the case of the rights of user hereinbefore given by the Virginian Company to the Chesapeake Company.

(c) It is understood that in case any right of way for any branch or extension to be constructed hereunder (except the branch or extension now proposed to be constructed by the Virginian Company as provided in Article 1 hereof) be owned by the other party hereto, the party so constructing such branch or extension shall have the right to acquire by deed or by condemnation such right of way at its cost to the party then owning it, including interest and taxes.

(d) The duty of either party hereto to give any notice as provided in paragraphs (a) and (b) of this Article 5, in respect to any such extension or branch, and the right of the other party to have the right of user of the same, shall be contingent upon the other party then having the right to use the track from which such branch or extension takes its start, that is to say, that the other party shall not be entitled to such notice nor to such right of user unless it shall be then owning or exercising and paying for right of user over the track necessary to give it a connection with the branch now proposed to be built as first hereinabove provided.

[fol. 1340] 6. The owner of any jointly used property (hereinafter called the "Owning Company") shall maintain the tracks, bridges, structures and facilities upon such jointly used property in good, proper and suitable condition, and it shall have the right to make such permanent additions, extensions and improvements to such bridges, tracks and facilities and other property, including the construction of side tracks and switches to industries on said line, as in its judgment is proper and right, the other Company, however, to have reasonable and proper notice of all details connected therewith, and the cost of any work done or material furnished by the Owning Company in making connections with or constructing side tracks or switches to industries upon the line of any jointly used trackage shall be counted

as a part of the cost upon which the other Company is to pay interest as aforesaid; and in like manner the other Company shall have the right to require any permanent addition, extension or improvement to such bridges, tracks, structures and other property, including the construction of said tracks and switches to industries on said line, as it may deem proper and right, notice whereof shall be duly given to the Owning Company, and the Owning Company shall forthwith provide the same; provided, however, that in the event the Owning Company shall fail to provide the same then the other Company may, at its own cost and expense furnish such additional property for its exclusive use, with the right, however, to the Owning Company, within a period of three (3) months from the receipt of the notice from the other Company to provide the same, to elect to use and have equal rights of user over and upon said property so provided, upon the same terms as to consideration for the right of equal user and sharing of maintenance and operating expense as in the case first hereinbefore provided for.

7. Each Company shall have the right to run its locomotives, cars and trains over said jointly used line of railroad, and to use and enjoy any and all of the facilities thereof. There shall be no restriction as to the business to be handled by either Company upon the tracks jointly used under this agreement, and each Company shall have all the revenue collected for the transportation in its trains over said tracks of freight, passengers, mail or express.

[fol. 1341] Passenger trains of each Company shall have equal rights and have preference over all freight trains; in like manner freight trains of each company shall have equal rights, it being the intent and meaning hereof that no discrimination shall be practiced in the movement of trains, service or facilities rendered, but the trains of each Company shall have equal, fair and reasonable service over the jointly used tracks as herein set forth.

8. The Owning Company shall have the supervision of the maintenance of property jointly used and keep the same in good condition and repair. The Owning Company shall prescribe the time tables, rules and regulations governing the use of the jointly used tracks and other prop-

erty, providing fully for the requirements of the business of the other Company, and all such time tables, rules and regulations shall be fair and reasonable and in accordance with the rights of equal user of the parties hereto, and the expense of printing time tables shall be in each instance borne by the company requesting a change in time.

The service of joint officials and employees shall be performed with strict impartiality and fairness, and upon the request of the chief operating officer of either party hereto any joint official or employee shall be removed, and any employee of either of the parties hereto neglecting or refusing to obey any of said reasonable rules and regulations shall be prohibited from employment upon the premises jointly used.

9. In respect to liability for damage to or loss or destruction of property, personal injury or loss of life, occurring in connection with the use of any jointly used tracks, the following provisions shall apply as between the parties hereto, herein referred to collectively as companies:

(a) All men (except those employed on locomotives or cars by one only of the companies) regularly or temporarily employed in connection with the construction, operation, maintenance, repair and renewal of said tracks, or appurtenances or appliances used in connection therewith, shall be deemed joint employees of the companies.

(b) Each company shall be liable for all damage to or loss or destruction of property, personal injury or loss [fol. 1342] of life which shall be caused by or upon its locomotives, cars or trains through the acts or omissions of its men or joint employees.

(c) In the event of a collision between the locomotives or cars of the companies, caused by the joint acts or omissions of their employees, or caused partially or wholly by the acts or omissions of a joint employee, each company shall sustain without indemnity all loss or damage to or destruction of its own locomotives or cars, and be liable for all property in its custody, and for all personal injury or loss of life to its own employees or to persons upon its locomotives or cars; and if there shall be any loss or damage to or destruction of property of any other party or any personal injury or loss of life to any other party or to a joint employee,

or if any buildings, structures, appurtenances or appliances of any jointly used tracks shall be damaged or destroyed, the companies shall equally bear the amount that shall be paid in settlement of all claims of such other party or joint employee, and the expense of making such repairs to or rebuilding of the track, buildings, appurtenances or appliances as shall be necessary by reason of such collision.

(d) In the event of any loss or damage to or destruction of property of a third party by fire or otherwise, or in the event of any personal injury to or loss of life of a third party or a joint employee, the responsibility for which loss, damage, destruction, injury or loss of life cannot be determined with certainty, the companies shall equally bear the amount that shall be paid in satisfaction of any judgment or decree of court, or otherwise, in settlement of any claim for such loss, damage, destruction, personal injury or loss of life.

(e) If either of the companies shall be compelled to pay any judgment, costs, or expenses, the whole or any part of which by the terms hereof shall be borne by the other, then the Company so liable shall promptly reimburse the company making the payment for the amount so paid.

(f) In case of any suit or action against either of the companies for any damage, loss or destruction, personal [fol. 1343] injury or loss of life for which the other company shall be wholly liable hereunder, the company against which suit or action shall have been brought may give the other notice of the pendency thereof, and thereupon and thereafter it shall be the duty of the company so notified to take charge of the defense and conduct the same and pay all expenses thereof, including attorneys and counsel fees, and to pay or perform such judgment or decrees as shall be rendered therein.

(g) In case of any suit or action involving joint liability be brought, the company against which the suit or action shall have been brought shall give the other due notice of the pendency thereof.

10. Statements for all payments and settlements, excepting payment of interest and taxes, required to be made hereunder shall be rendered as near the twentieth (20th) of each month as practicable for the preceding calendar month

and paid within twenty (20) days thereafter. The books and accounts of each company, so far as they relate to bills and statements to be rendered hereunder, shall be open at all reasonable times for the inspection of the properly authorized representatives of the other company.

It is understood and agreed that the term "Operating Expenses" as used herein shall include service of agents, operators, track and bridge men, jointly employed trainmen and enginemen, if any, other employees who may be stationed directly along or upon the tracks covered by this agreement, and such proportion of the expense of division train masters, dispatchers and roadmasters as may be represented by the mileage operated under this agreement as compared with the total mileage over which such officials have jurisdiction.

11. In case of any accidental violation of any of the provisions of this agreement, such as may occasionally occur notwithstanding the exercise of diligence and good faith, by either party, such violations shall be adjusted by proper compensation between the parties themselves, respectively, for the loss suffered by it therefrom.

12. And it is further agreed that if at any time a difference of opinion or dispute shall arise between the parties hereto in respect to any of the provisions of this agreement [fol 1344] ment or any action hereunder, the question in dispute, if it cannot be settled by the parties themselves, shall be referred to a board of arbitration consisting of three (3) competent and disinterested persons skilled in railroad matters, one (1) of which persons shall be elected by the Virginian Company and one (1) by the Chesapeake Company and the third (3d) by the two thus chosen. The party desiring such arbitration shall give written notice of the same to the other party, stating therein definitely the point or points in dispute and naming the persons selected by such party as arbitrator, and it shall be the duty of the other party hereto within fifteen (15) days after receiving such notice to name an arbitrator, and in the event it does not do so the party serving such notice may select the second arbitrator and the two thus named shall select a third. In the event of the failure of the two arbitrators thus named to agree upon a third within twenty (20) days

after their appointment as aforesaid, then the third arbitrator or umpire may be named by the Judge of the United States District Court for the Southern District of West Virginia, and the said Judge is hereby requested to act in the premises and name said umpire. The arbitrators thus chosen shall give to each of the parties hereto written notice of the time and place of hearing, which hearing shall not be less than ten (10) or more than twenty (20) days thereafter, and at the time and place appointed shall proceed with the hearing unless for some good cause of which the arbitrators or a majority of them shall be the judges, it shall be postponed until some later day or date within reasonable time, and the determination of the board of arbitration thus constituted, or of a majority of the persons composing the same, shall be made in writing, and a copy thereof delivered to each of the parties hereto, and shall be final and conclusive upon the parties in reference to the question or questions thus submitted.

The parties hereto hereby covenant, stipulate and agree with each other that they will, respectively, abide by and perform such award; the expense of such arbitration, including the fees of the arbitrators, to be borne by the parties hereto equally.

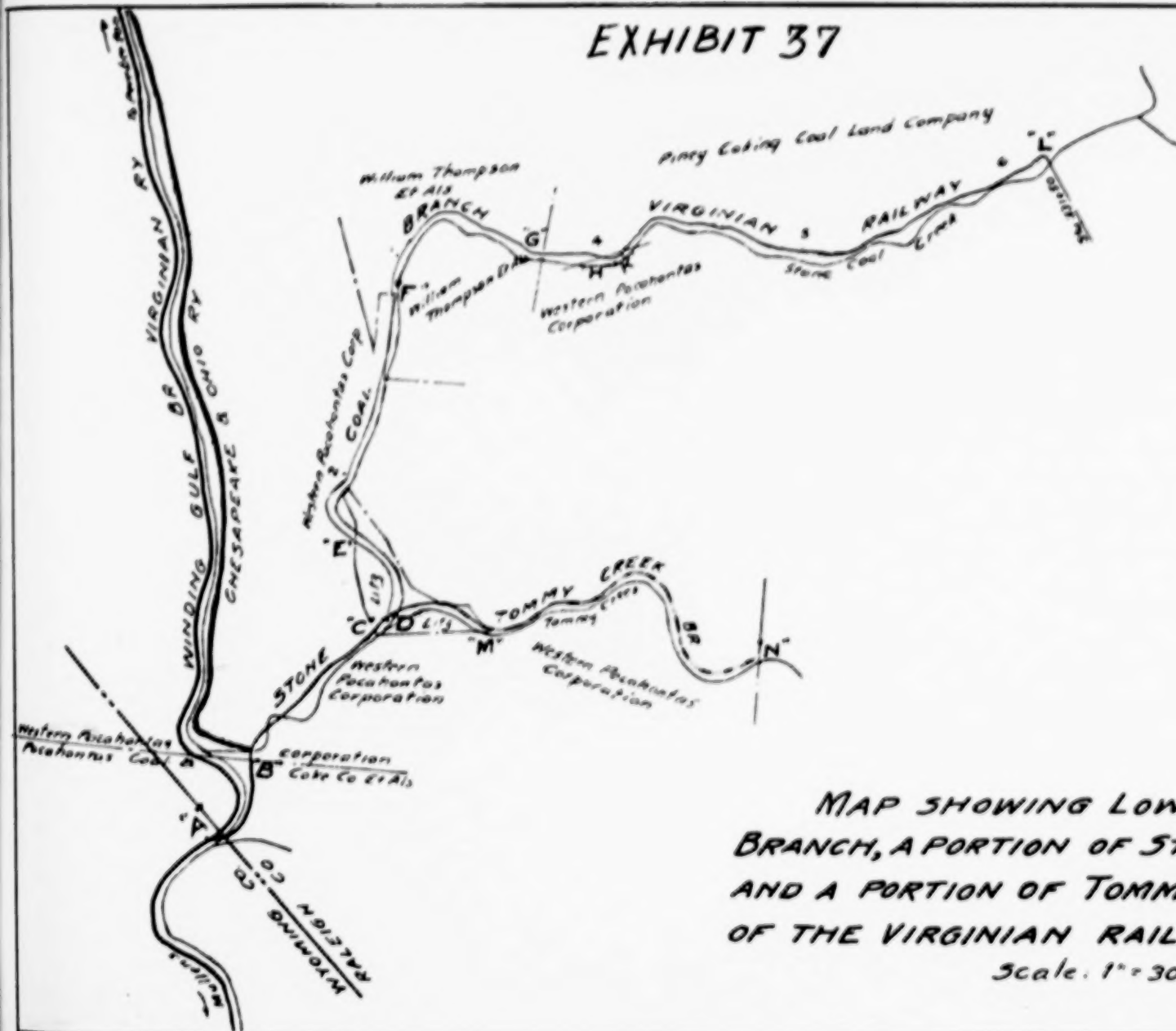
Pending settlement of the matter submitted for arbitration, the relations and conduct of the parties toward each [fol. 1345] other shall continue pursuant to the provisions contained in this agreement, and shall in no way be affected by such controversy.

13. It is understood that the Virginian Company proposes to construct the branch or extension now proposed to be built by it and any other branches or extensions of such branch or extension which it may build from the proceeds of, or on the faith of, bonds secured by its First Mortgage, dated May 1, 1912, to the Farmers' Loan & Trust Company, Trustee, and duly recorded; that the said branch or extension now proposed to be constructed and other branches or extensions of said branch or extension which it may build will be subject to the lien of said mortgage as a first lien thereon, and that nothing herein contained shall operate and be construed to give to the Chesapeake Company in respect to the rights given or to be given it hereunder any priority over the said mortgage or deed of trust

101

EXHIBIT 37

1346



MAP SHOWING LOWER STONE COAL BRANCH, A PORTION OF STONE COAL BRANCH, AND A PORTION OF TOMMY CREEK BRANCH OF THE VIRGINIAN RAILWAY.

Scale: 1" = 3000'

or the rights of the bondholders thereby secured, which mortgage and rights shall be in all respects paramount and superior to any rights hereby given; and similarly that the Chesapeake Company may construct any branches or extensions which it may build hereunder upon the proceeds of bonds secured by any of its mortgages, and in such case any rights which the Virginian Company may have in respect to any branch or extension constructed by the Chesapeake Company hereunder shall be subject to the said mortgage or mortgages, as the case may be, of the Chesapeake Company, and the rights of the bondholders secured thereby, which mortgage or mortgages and rights shall be in all respects paramount and superior to any rights hereby granted.

14. This agreement shall run and bind the parties hereto, their lawful successors and assigns, for a period of ninety-nine (99) years from and after the date hereof.

In witness whereof the parties hereto have caused these presents to be signed by their respective Presidents, and their corporate seals to be hereto affixed, attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

The Virginian Company, by Raymond Du Puy, President,

Attest: Jas. Clarke, Secretary.

The Chesapeake & Ohio Railway Company, by Geo. W. Stevens, President.

Attest: ———.

(Here follows map, side folio page 1346)

[fol. 1347]

EXHIBIT No. 38

Tonnage Agreement Between The Virginian Railway Co. & The Gulf Coal Company, Dated September 23rd, 1908

This agreement, made this the 23rd day of September 1908, between The Virginian Railway Company, a corpora-

tion of the first part, hereinafter called the Railway Company, and The Gulf Coal Co. a West Virginia Corporation of the second part, hereinafter called the Coal Operator.

Whereas, the Railway Company proposes to build or to cause to be built by a subsidiary or allied company, all or part of a branch line of railroad extending from the main line of the Railway Company, at the mouth of Slab Fork, in Wyoming County, West Virginia, along the Guyandotte River and Winding Gulf Fork thereof, and Soak Creek to a point near the mouth thereof, in Raleigh County, West Virginia, substantially according to the location of the Winding Gulf Branch of the Deepwater Railway Company, which last named company has conveyed all its property and franchises to the Railway Company; provided that a satisfactory amount of coal or coke tonnage is guaranteed to be shipped over said proposed branch from the coal operations to be developed by said branch; and

Whereas, the Coal Operator leases from The Beaver Coal Company 275 acres of coal land situate on said Winding Gulf Creek and waters thereof, and bounded as follows: On the north by Winding Gulf Creek; on the east by Land owned by Levi Cook; on the south by Land owned by The Beaver Coal Co.; on the west by Wallens Branch Creek; which land will be made accessible and capable of development by said proposed branch line.

And also owns in fee approximately 449 acres, part of [fol. 1348] which adjoins the before mentioned lease of 275 acres of coal land.

Now, therefore, this agreement witnesseth:

1. That a Railway Company covenants and agrees that it will begin, or cause a subsidiary or allied corporation to begin the construction of the said branch line of railroad on or before the 1st day of November, 1908, and cause the same to be completed as soon as practicable thereafter to a point where connection can be had with mines to be opened by the Coal Operator.

2. That the coal operations on said branch line shall have the same freight rates on coal and coke shipped to points outside the state of West Virginia, as the coal operations shipping New River Coal or Coke from the mines on the main line of the Railway Company; and that the coal operations on the said branch line shall have an equal and pro-

portionate car supply with the coal operations on the main line of the Railway Company.

3. That the Coal Operator covenants and agrees to begin on or before the 1st day of November, 1908, the development of the lands owned or controlled by it as aforesaid, for the mining of coal to be shipped over and by the said branch line and the main line of the Railway Company, and to prosecute the development thereof with all practicable dispatch, and to begin the shipment of coal therefrom over the said branch line and the main line of the Railway Company within 90 days after the said branch line shall be completed to a point from which connection can be made with the Coal Operator's tipple or tipples.

4. That connection between the tipple or tipples of the Coal Operator and the said branch line shall be made and loading tracks put in under the Railway Company's usual side track contract and rules, as in similar cases on the main line.

5. That the Coal Operator covenants and agrees for itself, its successors and assigns that there shall be shipped from said premises hereinbefore described over the said branch line and the Railway Company's main line, at the least 10,000 net tons of coal in the calendar year 1910, 20,000 [fol. 1349] net tons of coal in the calendar year 1911, and 50,000 net tons of coal in the calendar year 1912, and each year thereafter, to and including the year 1933; provided that one tone of coke shipped shall be counted as one and one-half ($1\frac{1}{2}$) tons of coal; and provided, further, that the Coal Operator, its successors and assigns, shall not be responsible for any deficiency in the tonnage herein agreed to be shipped in any year, caused by the failure on the part of the Railway Company to furnish sufficient cars to move the agreed tonnage as the same shall be prepared and ready for shipment, or by the failure on the part of the Railway Company to give as low freight rates on coal and coke to its Tidewater terminals and other points reached by its main line extensions thereof and branches as may be charged by other railway companies shipping New River or Pocahontas Coal and coke, on such coal and coke to the same points respectively, or by strikes or by the failure to obtain a market for the coal, or by other causes

beyond the control of the Coal Operator, the intention hereof being that if in any year covered by this contract the amount of coal herein agreed to be shipped from the premises above described, shall be mined and shipped therefrom, such amount shall be shipped over and by the said branch line and the Railway Company's main line, but that there shall be no liability on the part of the coal Operator, its successors or assigns, for failure, for any reason beyond control to produce and ship the stipulated amount.

6. That the covenants and agreements of the respective parties hereto, shall, so far as possible, run with and bind their respective properties; and that the Railway Company shall not dispose of its property without binding its successors or assigns to the performance and fulfillment of the covenants and agreements upon its part herein contained; and that the Coal Operator shall not dispose of its said property without binding its successors and assigns to the observance and performance of the covenants and agreements on its part, herein contained.

In witness whereof the Railway Company by Raymond Dupuy, its Vice-President and General Manager, hath hereto caused its corporate name to be signed and its corporate seal to be affixed and the Coal Operator by its President and Secretary have hereto caused its corporate name to be signed and its corporate seal to be affixed.

The Gulf Coal Co. S. J. Patterson, Prest. H. J. Dreese, Secy. (Seal.)

The Virginian Railway Company, by Raymond Dupuy, Vice-Pres. and Gen. Mgr.

Attest: F. W. Russell, Asst. Secy. (Seal.)

Copy.

[fol. 1351]

EXHIBIT No. 39

INTERSTATE COMMERCE COMMISSION.

Docket No. 13832

Witness Adsit. Date: Nov. 14, 1922

Deed Between the Gulf Coal Company & the Virginian Railway Co., Dated December 15th, 1909, Conveying to the Virginian Railway Co. Right of Way Required for Side Track to Tipple of the Gulf Coal Company at Paterson M. P. 17.43—Raleigh County, W. Va.

That for and in consideration of — to the said Coal Company cash in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable considerations fully paid, the said Coal Company does hereby grant and convey unto the said the Virginian Railway Company, party of the second part as aforesaid, its successors and assigns, with covenants of special warranty, all the surface contained on that certain strip, piece or parcel of land lying and being in the County of Raleigh and State of West Virginia, on the waters of Winding Gulf Creek, and described as follows:

A certain irregular strip or parcel of land varying in width on each side of the center line of a certain side-track survey made to the tipple of the said Coal Company, and extending from station 4 plus 68 in the present northern right of way boundary line of the right of way of the Winding Gulf Branch of the Virginian Railway to station 23 plus 50 of said side-track survey, and described as follows:

Between stations 4 plus 68 in the present northern right of way boundary line, and 7 plus 75, being a strip of land 16 feet in width, that is to say, 8 feet in width on each side of and parallel with the center line of said side-track. Between stations 7 plus 75 and 10 plus 00 on the south side, a strip 8 feet in width and parallel with the center line of said side-track, and on the north side varying in width from 8 feet to 23 feet, the northern boundary line of same being 8 feet distant from and parallel with the center line of the turnout. Between stations 10 plus 00 and 12 plus

03 being a strip 31 feet in width, that is to say, 8 feet in width on the south side of and 23 feet in width on the north side of and parallel with the center line of said side-track. Between stations 12 plus 03 and 15 plus 95 (the center of the tipple) on the south side a strip 8 feet in width and parallel with the center line of said side-track and on the north side varying in width from 23 feet to 50 feet, the northern boundary line of same being 8 feet distant from and parallel with the center line of the latter track. Between stations 15 plus 93 and 19 plus 17 on the south side being a strip 8 feet in width and parallel with the center line of said side-track, and on the north side being a strip varying in width from 50 feet to 8 feet, the northern boundary line of same being 8 feet distant from parallel with the latter track. Between stations 19 plus 17 and 23 plus 50 (the end of said side-track) being a strip of 16 feet in width, that is to say 8 feet in width on each side of and parallel with the center line of the said side-track. [fol. 1352] The center line of the side-track as referred to being described as follows:

Beginning at a point in the center line of the Winding Gulf Branch of the Virginian Railway at station 345 plus 80 equal station 2 plus 15 of the center line of said side-track; thence on a six degree curve to the left a distance of 132.5 feet to Station 3 plus 47.5 P. C. C., thence on a twelve degree curve to the left a distance of 184.5 feet to station 5 plus 32; thence on a tangent N. 14 degrees 30' E. a distance of 243 feet to station 7 plus 75; thence on a twelve degree curve to the right a distance of 168 feet to station 9 plus 43 P. C. C.; thence on a five degree curve to the right a distance of 482 feet to station 14 plus 25; thence on a tangent N. 58 degrees 46' E. a distance of 575 feet to station 20 plus 00; thence on a sixteen degree curve to the left a distance of 350 feet to the end.

The above described strip or parcel of land containing 1.14 acres, more or less and being shown on map hereto attached and made a part hereof.

It is understood and agreed by and between the parties hereto that this conveyance shall only be the surface, and that all coal, oil, gas timber and all other minerals shall remain the property of the Coal Company, and that the Rail-

way Company will allow the Coal Company to remove the same at any time it sees fit, providing it does not reasonably damage the Railway Company; it being understood and agreed that the Coal Company for itself, its successors or assigns, reserves the right to mine and remove the coal, gas, oil, and all other minerals upon or under the premises hereinbefore described and conveyed, provided, however, that same shall be done at the sole cost and charge of the Coal Company, its lessees, successors or assigns and provided also that in the event the mining or removing of the coal, gas or oil as aforesaid will not endanger or impede, interfere with or in any way affect the security of the road-bed or the operations of the Railway Company.

Said Coal Company further reserves from this conveyance to itself, its successors, lessees or assigns, the right to cross the tracks of the Railway Company on the right of way hereby conveyed, with the tram-roads or railroads and railroad switches, water and steam pipes, electric power and telephone wires without any rental or charge whatsoever, above or under grade, at such point or points as may be necessary for the purpose of removing and transporting the timber, coal, oil and other minerals and products from the lands adjacent to said Railway and coterminous territory and to other railroads, and the right to cross the tracks on the land herein conveyed overhead or underneath with such tipples and railroad switches, inclines, and electric power and telephone wires as may be necessary in mining operations upon the land adjacent to said tracks free to The Gulf Coal Company; also to be allowed to build a platform on right of way above described within regulation distance from track, say four to six feet, and in such manner as will not interfere with the operations of the Railway Company, together with the right to construct such tunnels and mining ways underneath said right of way as may be necessary for passage ways between its mining operations and to appropriate to itself, its successors and assigns on the within described land, free of charge and free from the operation of this conveyance, the coal, oil, gas and other minerals mined from such tunnels and mining ways, provided, however, that any such railroads, tram roads, tipples, inclines, tunnels, electric power and telephone wires or mining ways shall be constructed and maintained at the

sole expense of the said The Gulf Coal Company, its successors, assigns or lessees; that any overhead crossings, whether by tram roads, railroads, tipples or inclines, electric power and telephone wires, shall have a clear space of not less than twenty-two (22) feet above the rails of the railway of the said The Virginian Railway Company, and shall have such horizontal clearance and be constructed to such plans and specifications, and of such materials as are necessary to afford proper protection to the track, trains and other property of the said Railway Company.

[fol. 1353] The said, The Gulf Coal Company, its successors, lessees and assigns, shall have the right to such necessary wagon road crossings at grade over the tracks of The Virginian Railway Company as may be necessary for the development of the lands of The Gulf Coal Company, such crossings to be located at mutually convenient points.

It is further understood that in the event the Railway Company should hereafter abandon the strip of land hereinabove described and hereby conveyed and remove therefrom the ties, rails, connections, fixtures, materials or other property which the said Railway Company may have thereupon and no longer require the said land for the use and operation of a spur track, siding or sidings, then in such event, upon such abandonment by the Railway Company, title to the above property shall revert to and revest in the Gulf Coal Company.

In testimony whereof the said Coal Company has caused these presents to be signed in its corporate name by S. J. Patterson, its President, duly authorized, and its corporate seal to be affixed hereto, attested by its Secretary, the day and year first above written.

The Gulf Coal Company, by S. J. Patterson, President.

Attest: H. J. Dreese, Secretary. (Seal.)

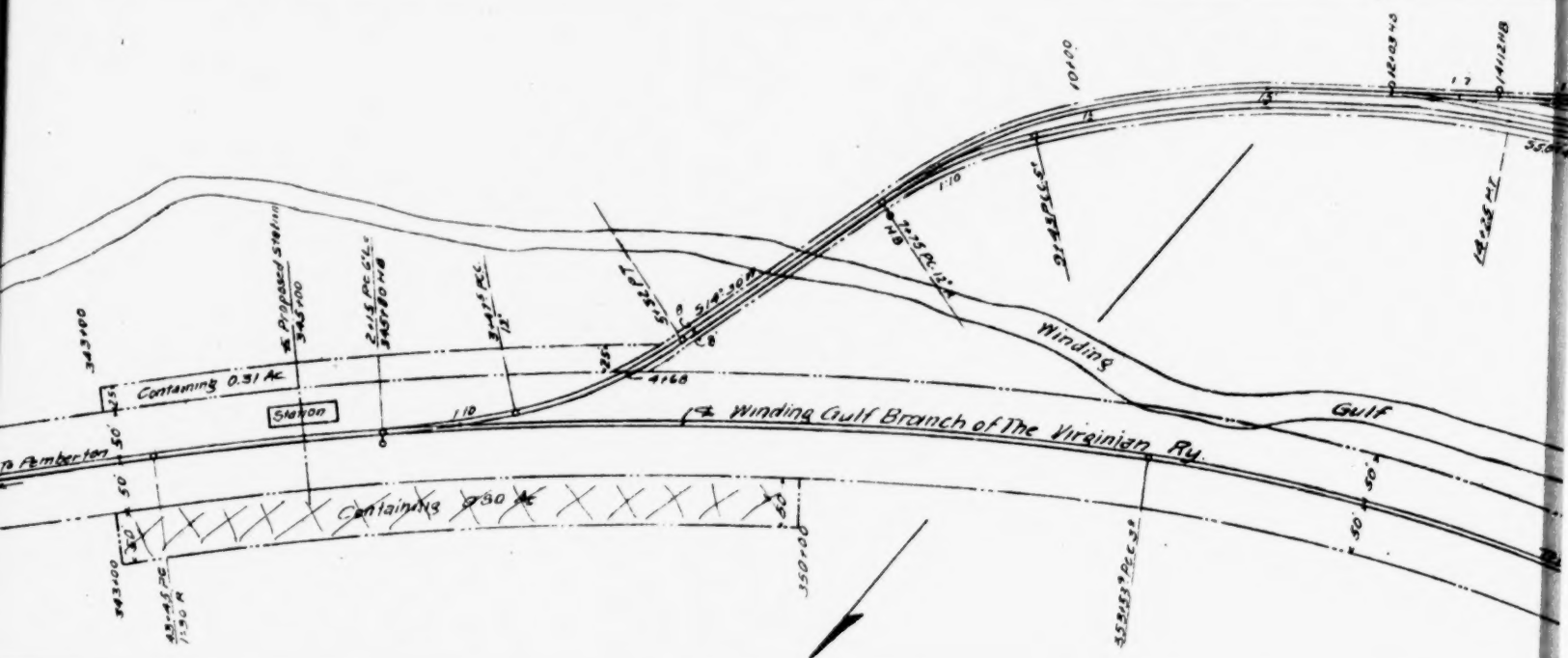
Copy.

[fol. 1354] STATE OF OHIO,

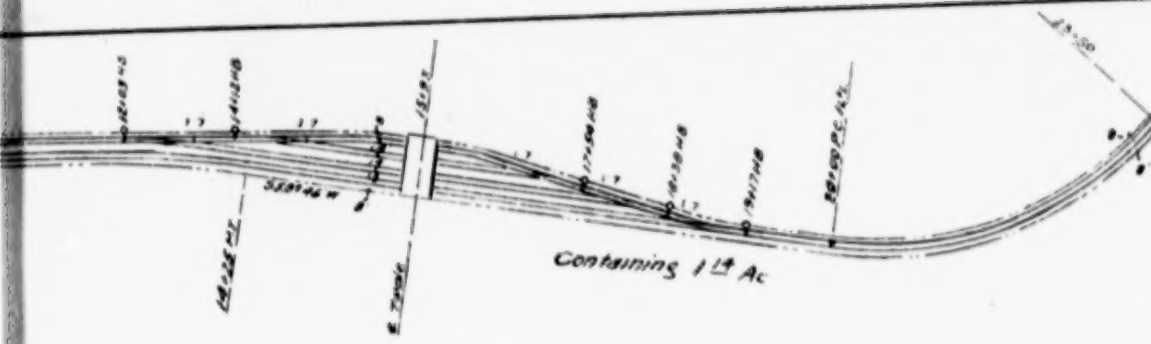
County of Montgomery, To wit:

I, John B. Harshman, a Notary Public of the said County of Montgomery in the State of Ohio, do hereby certify that S. J. Patterson, personally appeared before me in my said

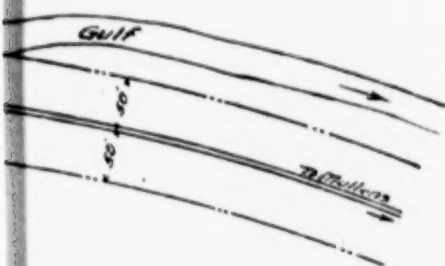
Coun
that
corpo
the 1



1355



4661



Right of Way required for Side Track to Tie Line of

VIRGINIAN RAILWAY
WINDING GULF BRANCH

THE GULF COAL CO

AT

PATTERSON

M. P. 17 43 Raleigh Co. W. Va.

Scale 1" = 100'

Sept 13, 1909

Approved

Chief Engineer

A-714

County and being by me duly sworn did depose and say that he is the President of The Gulf Coal Company, the corporation described in the writing above, bearing date the 15th day of December, 1909, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation; and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And said S. J. Patterson acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this 8th day of January, 1910.

John B. Harshman, Notary Public in and for Montgomery County, Ohio. My term of office expires November 20, 1911. (Seal.)

WEST VIRGINIA:

Raleigh County Court Clerk's Office

January 15, 1910.

The foregoing deed, together with the certificate of acknowledgment thereon, was this day presented in said office and admitted to record.

Teste:

M. J. Meadows, Clerk.

Copy.

(Here follows map, side folio page 1355)

INTERSTATE COMMERCE COMMISSION

Docket No. 13832

Witness: Adsit. Nov. 14, 1922

Agreement Between The Gulf Coal Company & The Virginian Railway Company, Dated January 6th, 1910

Mine Track Layout—Patterson, M. P. 17.43, Raleigh County, W. Va.

Whereas, the Coal Company desires that the Railway Company shall locate and build the said track and tipple loading tracks as shown in red on the map attached hereto.

Now, therefore, in consideration of the premises and of the covenants hereinafter contained, it is hereby agreed as follows:

1. The Coal Company shall, at its own expense, furnish the necessary rights of way for all said track, including the necessary land for slopes of cuts and fills, and shall do all the necessary grading, and furnish all material for and erect all trestles and bridges, and furnish all the necessary white oak track and switch ties for the said tracks, all work and material to be subject to the approval of the Railway Company.

2. Upon the completion of said grading, trestling and bridging and the delivery and distribution of said ties upon and along the grade the Coal Company shall cause to be vested in the Railway Company by such apt and proper deed or lease, as the Railway Company may require title to the necessary rights of way for said tracks and all work and material upon the said rights of way for so long as the Railway Company shall keep the said tracks upon the said rights of way, the title so vested to revert and revest in the grantors or lessors of the same, their heirs, successors or assigns, whenever the Railway Company, its successors or assigns, shall cease to maintain and use said tracks and remove the rails and other track material therefrom; and thereupon the Railway Company shall furnish the necessary

rails and fastenings, frogs and switches, and shall lay the said tracks and do the necessary ballasting and thereafter [fol. 1357] maintain and operate them; but if the Coal Company shall fail to ship coal in the quantity and in the time specified in the said agreement of September 23, 1908, or if after the expiration of said agreement the Coal Company shall not in the opinion of the General Manager of the Railway Company ship sufficient coal to justify maintaining said tracks the Railway Company may, if it so elects, discontinue the operation of said tracks and remove the rails and other track material furnished by it hereunder, but such removal shall not bar the recovery of any and all damages to which the Railway Company may be entitled by reason of the failure of the Coal Company to comply in all respects with said agreement of September 23, 1908.

3. Upon completion of the said tracks the Coal Company shall pay the Railway Company for laying the said tracks as follows:

For labor furnished for laying and surfacing tracks, six hundred dollars per track mile.

For labor furnished for putting in each turnout, including the switch, frog and lead, twenty-five dollars.

For ballasting tracks, including both ballast and labor, sixteen hundred dollars per track mile, and the Railway Company shall thereafter, at its own expense, furnish the necessary labor and material for the maintenance, repairs and renewals of the said tracks.

4. The Railway Company shall have the exclusive use of the said tracks and shall do all the switching of loaded & empty cars thereover, but nothing herein contained shall be construed as requiring the Railway Company to maintain and operate the said tracks wholly for the business of the Coal Company, it being understood that the said tracks and any extensions, sidings or spurs which shall be built in connection therewith may be used for such business as the Railway Company shall desire, provided such use shall not unreasonably interfere with the operations of the Coal Company.

5. The Coal Company shall indemnify and save harmless the Railway Company against any and all damages and claims for damages on account of any loss or damage which it, its successors, assigns, bailees, bailors, lessees or licensees shall suffer by reason of any fire set by the locomotives or cars of the Railway Company to any buildings now or hereafter erected, or to the contents thereof or to [fol. 1358] any property of any kind stored or placed upon or along the said tracks.

And the Coal Company shall indemnify and save harmless the Railway Company against loss or damage to the property of the Railway Company or property in its custody, and against all loss on account of personal injuries, or loss of life which shall be caused by the acts or omissions of the Coal Company, its agents or employes.

In witness whereof, the parties hereto have caused their respective corporate names to be signed, and their respective corporate seals to be affixed to this agreement, in duplicate, the day and year first above written, by their respective authorized officers.

The Gulf Coal Co., by S. J. Patterson, President.

Attest: H. J. Dreese, Secretary.

The Virginian Railway Company, by Raymond Du Puy, Vice-President.

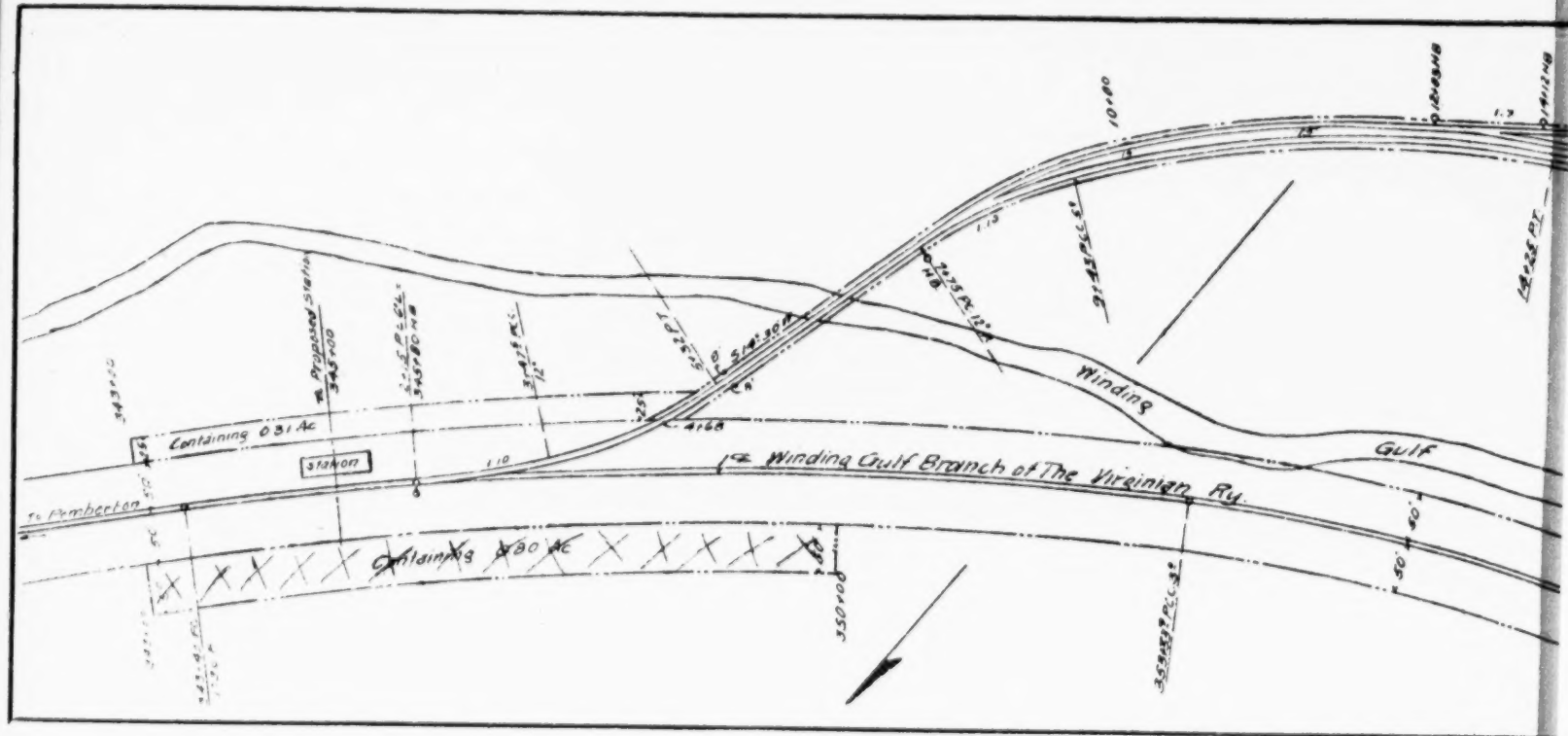
Attest: F. W. Russell, Assistant Secretary.

O. K. J. K.

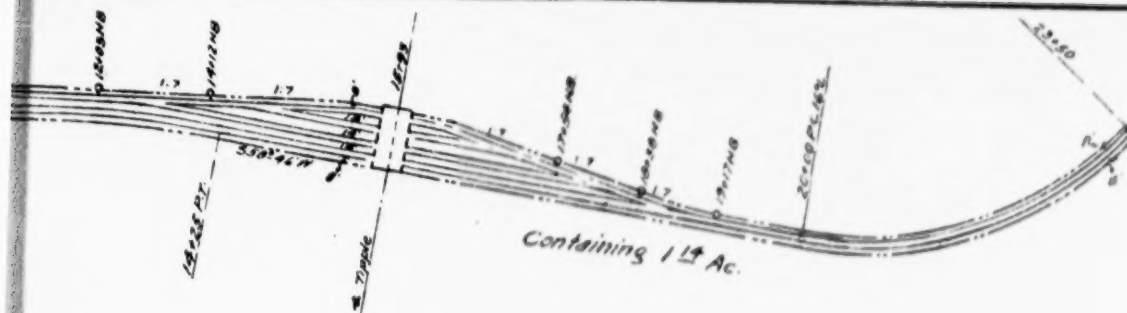
O. K. H. F.

Copy.

(Here follow map, part of Exhibit 40, side folio 1359, and Exhibits 41 and 42, maps, side folios 1360 and 1361)



1359



4661

VIRGINIAN RAILWAY
WINDING GULF BRANCH

THE GULF COAL CO.

AT

PATTERSON

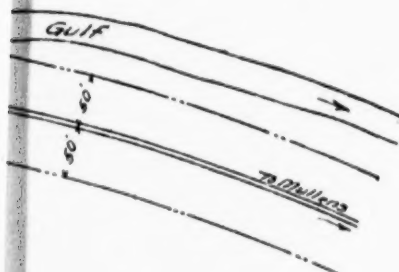
M. P. 17+23 Raleigh Co. W. Va.

Scale - 1" = 100' Sept 13, 1909

Approved

Chief Engineer.

A-714



MAPS

TOO

LARGE

FOR

FILMING



[64, 1362]

INDEPENDENT EXHIBIT No. 43

Statement of Distances, Rates, and Ton-mile Earnings, Coal, from New River (Group 1) and Kanawha Groups (2 and 3) Districts to Representative Destinations East and West, including also Distance from Deepwater, W. Va.

Destinations	New River district			Kanawha district			Distance from Deepwater
	Average distance	Rate	R. P. T. M. (mills)	Average distance	Rate	R. P. T. M. (mills)	
Richmond	350	2.65	7.57	437	2.75	6.29	376
Lynchburg	285	2.70	11.65	280	2.49	8.61	220
Norfolk	435	2.65	6.69	522	2.15	5.29	464
Washington	330	(a) 2.84	(b) 7.69	416	(a) 3.09	(b) 6.61	355
Newport News (for beyond the Cape)	431	(a) 2.52	(b) 5.22	509	(a) 2.02	(b) 4.06	450
Cincinnati	275	1.50	7.33	338	1.80	7.94	263
Louisville	340	1.50	5.85	390	1.80	6.30	305
Indianapolis	384	2.62	6.82	347	2.52	7.20	353
Chicago	500	3.24	5.78	523	3.09	5.91	528
Toledo (Lake Cargo)	373	2.00	5.50	328	1.91	3.65	347

(a) Per ton 2,240 pounds; all other rates per ton 2,000 pounds.

(b) Reduced to net ton basis.

Tariff References: C. & O. Ry. I. C. C. 7721, 9206, 9219, 10111, 8065 and 9218.

(Here follows Exhibit 44, map, right of way, etc., side folio 1363)

[fol. 1364]

EXHIBIT No. 45

The Ches. & Ohio Railway Co.

Maps and Profiles of Certain Lines in the New River District

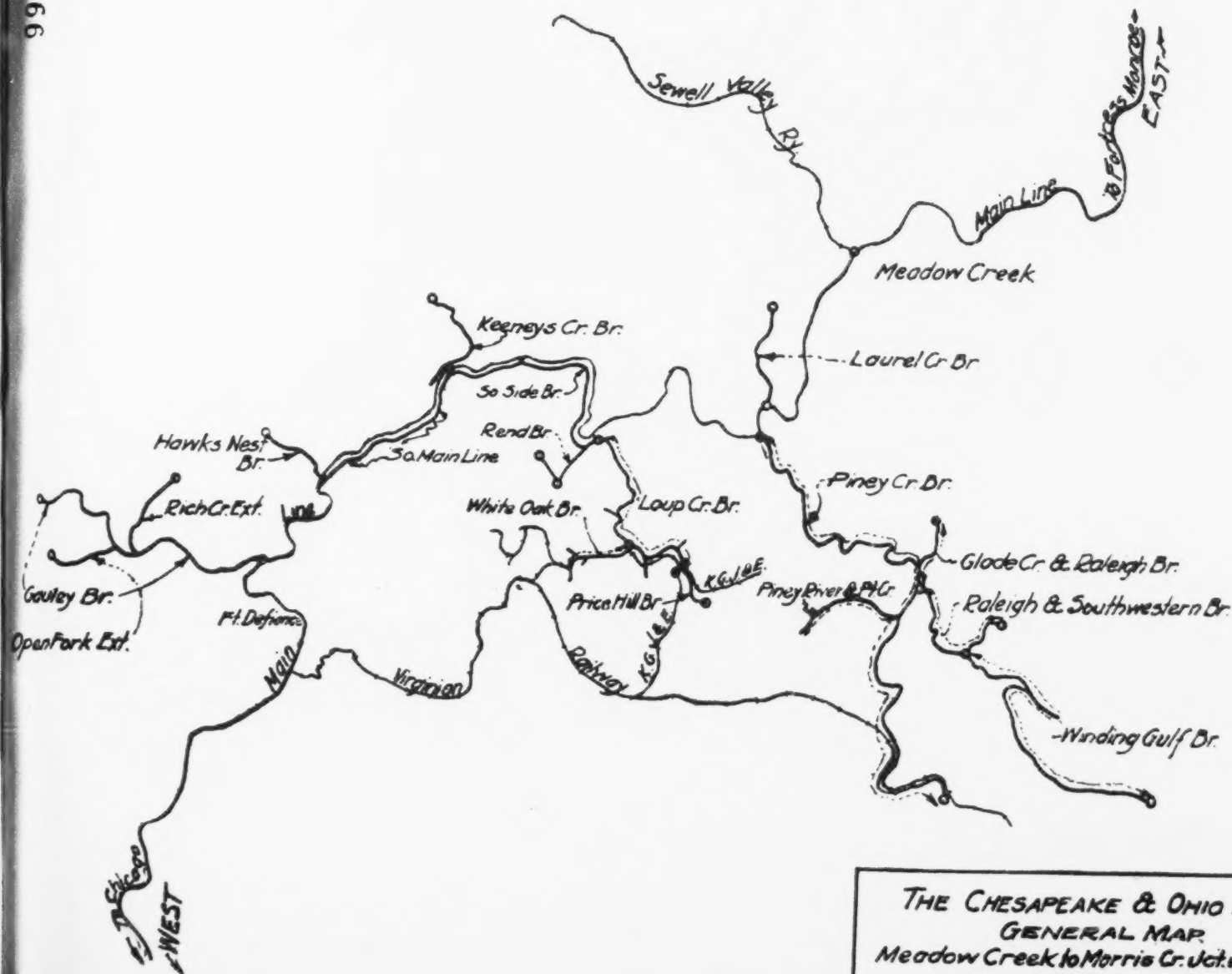
Office of Valuation Engineer, Richmond, Va., July 7, 1921

[fol. 1365]

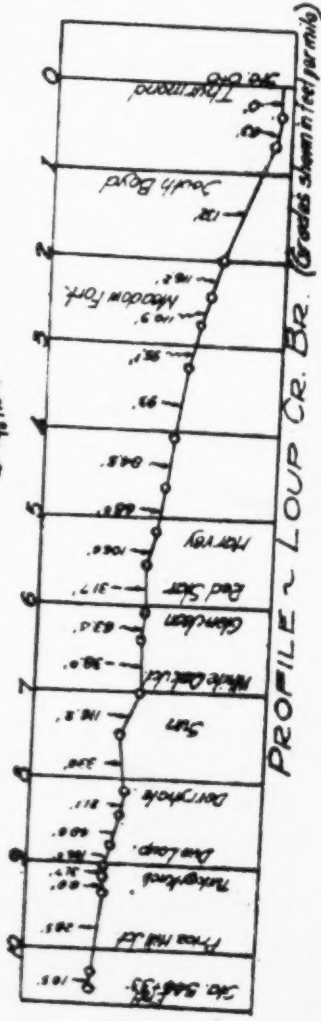
Index

General Map showing Main Line & Branches	Sheet #1
Loup Creek Branch Map & Profile	Sheet #2
South Main Line	Sheet #3
Price Hill Branch	Sheet #4
Rend Branch	Sheet #5
Laurel Creek Branch	Sheet #6
South Side Branch	Sheet #7
Hawks Nest Br.	Sheet #8
White Oak Branch	Sheet #9
Main Line-Meadow Creek to Ft. Defiance	Sheet #10
Gauley Branch	Sheet #11
Keeneys Creek Branch	Sheet #12
Piney Creek Branch & its Branches	Sheet #13
Switchback on Winding Gulf Branch	Sheet #14
Kilsyth Junction	Sheet #15

(Here follow maps, parts of Exhibit 45, side folio pages
1366-1381, inc.)



THE CHESAPEAKE & OHIO RY. CO.
GENERAL MAP
Meadow Creek to Morris Cr. Jct. with Branches
Office of Valuation Engineer
Richmond, Va. June 25, 1921.



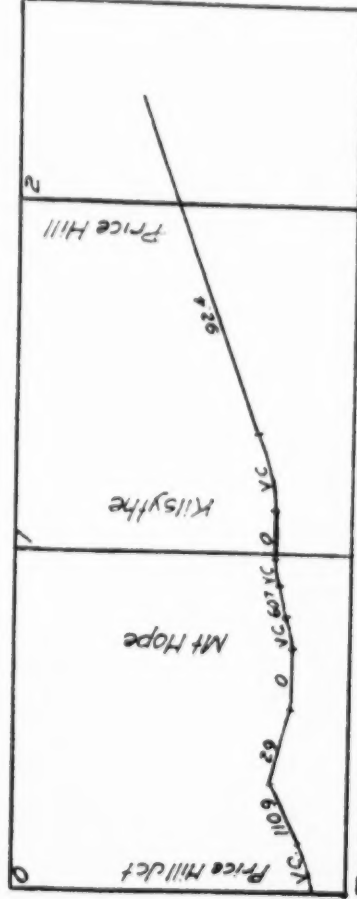
Against: $\sim 38''$ ~ 132 ft. per mi. = 2.5%

1367

CHES. & OHIO RY CO

June 8, 1921
Richmond, Va.

Richmond, Va. N336



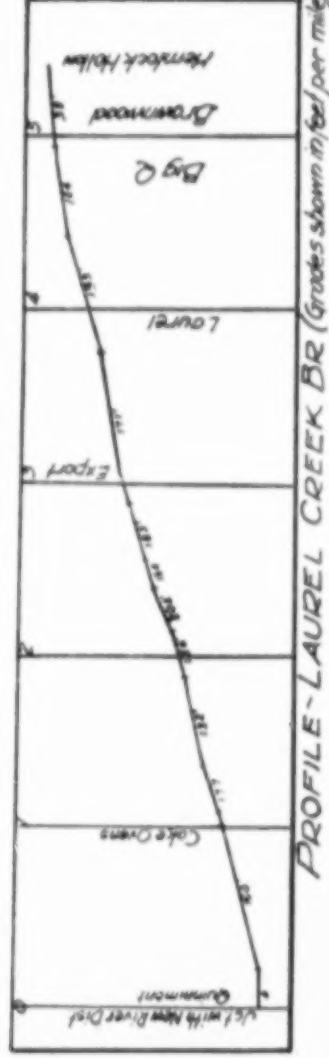
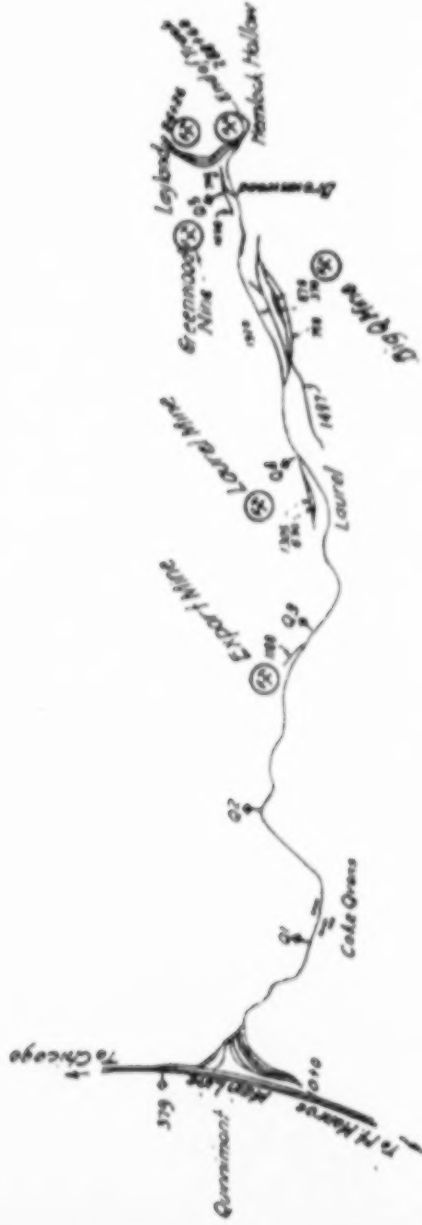
PROFILE ~ PRICE HILL BR. (Grades shown in feet per mile)

Maximum Grades:
 With the load ~ 110.9 ft. per mile = 210 %
 Against " " ~ 29 " " = 0.55

1369

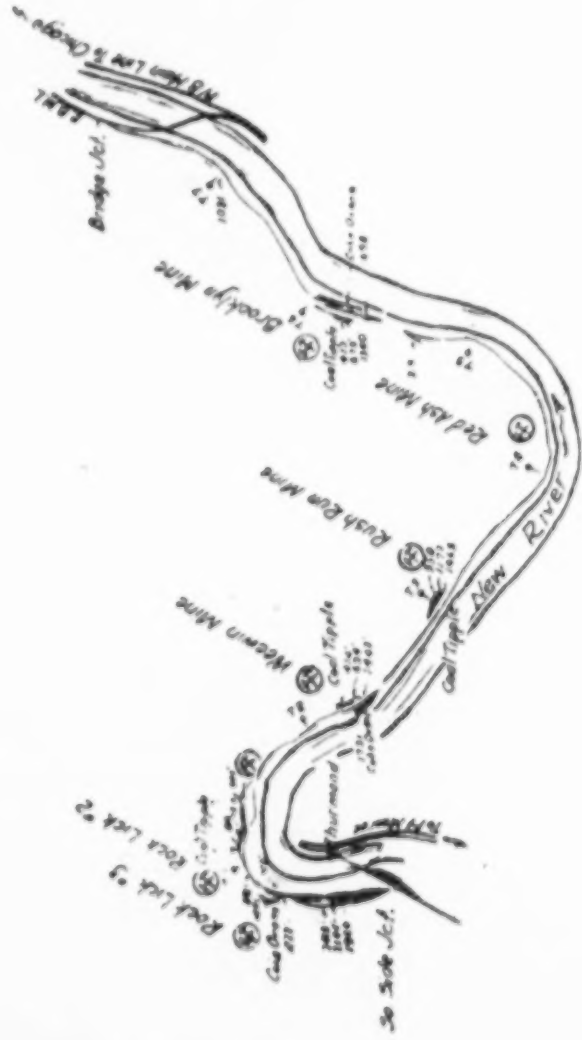
CHESAPEAKE & OHIO RY CO
 PRICE HILL BRANCH
 Office of Valuation Engineer
 June 25, 1921 Richmond, Va

M355-B



Maximum Grades:
 With load ~204 ft per mi. = 386 %
 Against " 00 " " 0.0
 1371

CHESAPEAKE & OHIO RY CO
 LAUREL CREEK BRANCH
 Office of Valuation Engineer
 June 25, 1921
 Richmond, Va.



Thurmond	12.4	50 Rush Run	18.5	Brooklyn	15.0	Cunard	10.0	Bridge Jct.	7.0
50 Subvol.	2.0								
Land									
Erskine									

PROFILE ~ SOUTH SIDE BR. (Grades shown in feet per mile)

Maximum Grade:

17.4 ft. per mi. = 0.33%

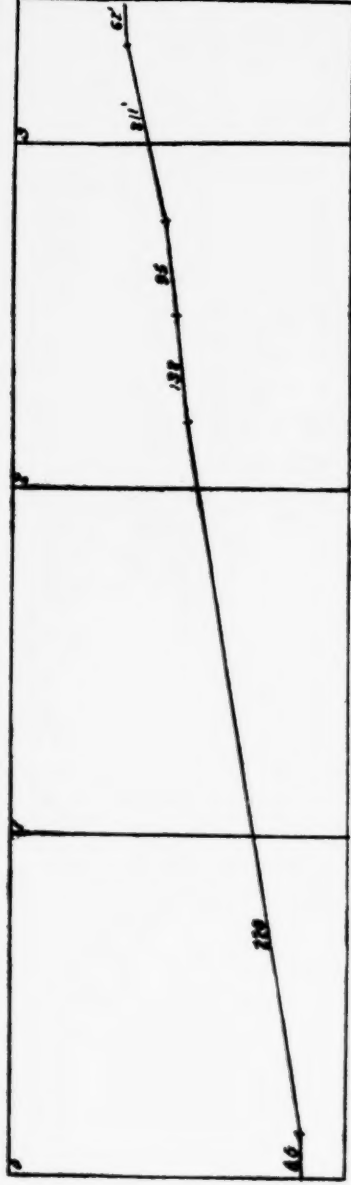
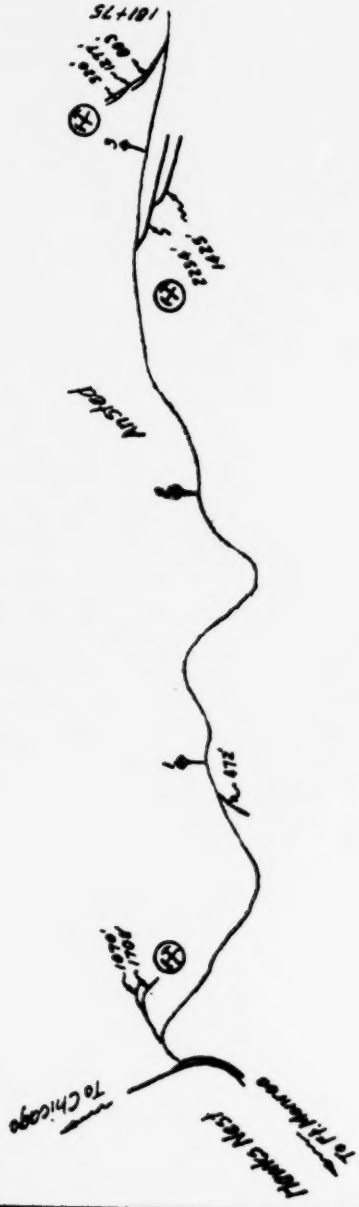
1372

CHESAPEAKE & OHIO RY. CO.
SOUTH SIDE BRANCH

Office of Valuation Engineer

June 25, 1921 Richmond, Va.

M 366-E



PROFILE ~ HAWKS NEST BRANCH (Grades shown in feet per mile)

Maximum Grades

With the load ~ 220 ft. per mi. = 4.17%

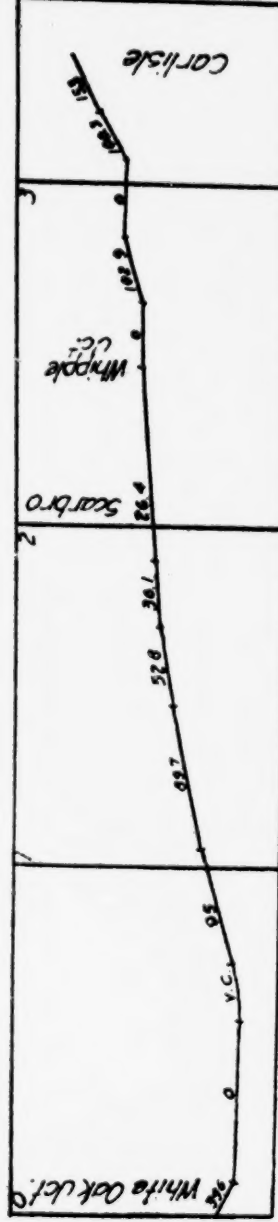
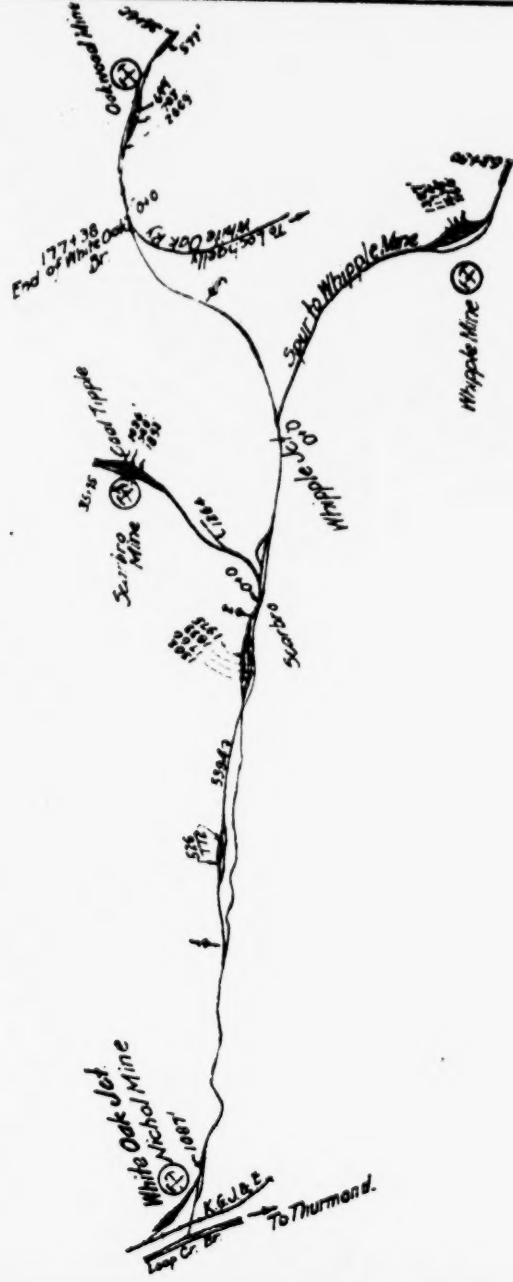
Against: " ~ 00 " = 0.0

1373

THE CHESAPEAKE & OHIO RY CO.
HAWKS NEST BR.

Office of Valuation Engineer
June 25, 1921
Richmond, Va.

M 356-4W



PROFILE ~ WHITE OAK BR (Grades shown in feet per mile)

Maximum Grades:
With the load ~ 153 ft. per mi. = 29%
Against " " ~ 396 " " = 0.75

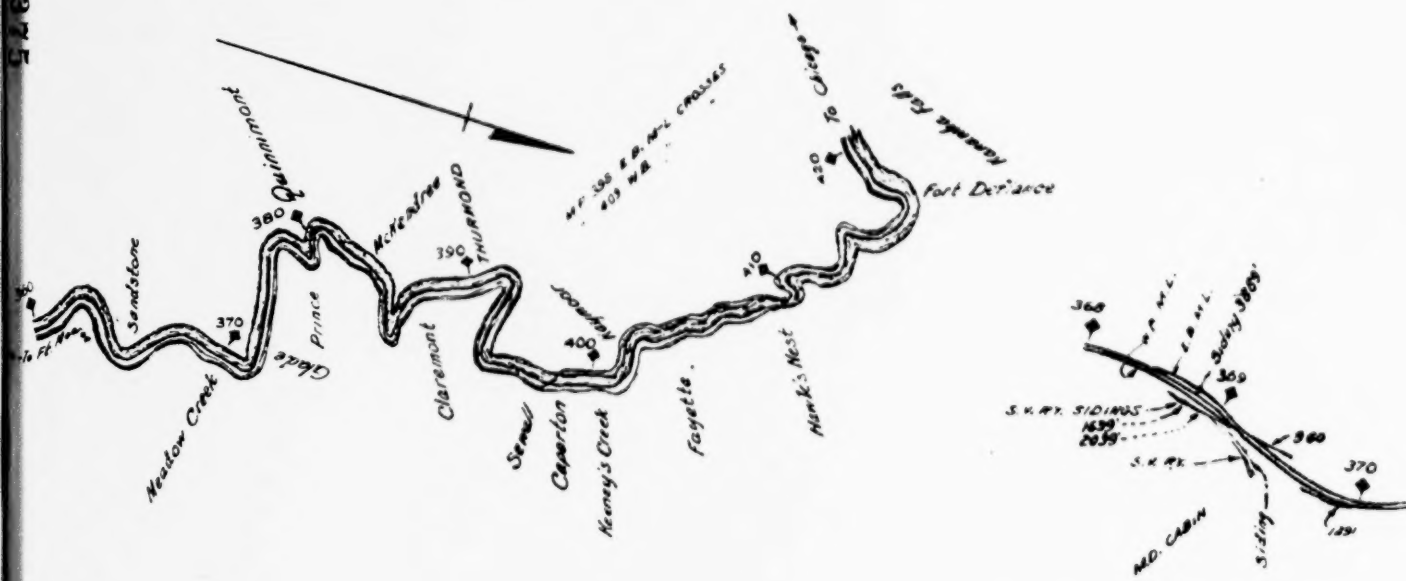
1374

CHESAPEAKE & OHIO RY CO.
WHITE OAK BRANCH.

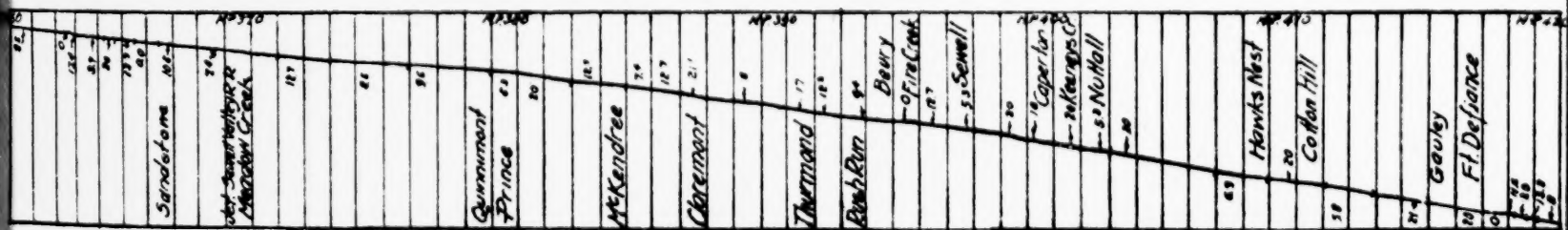
Office of Valuation Engineer
June 25, 1921 Richmond, Va.

M356-0

5261



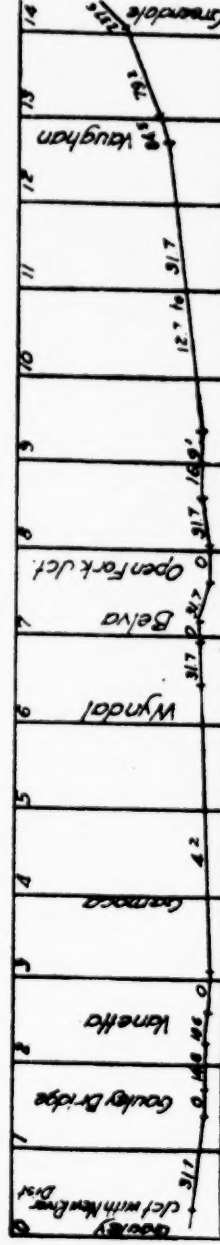
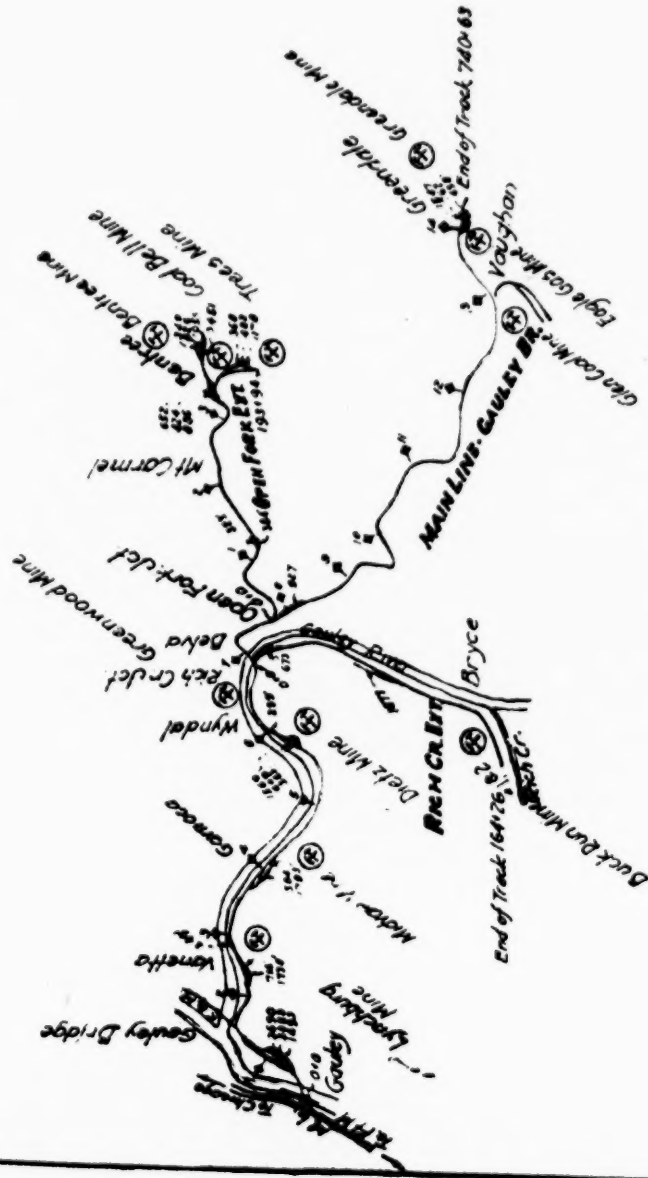
MEADOW CREEK



PROFILE ~ NEW RIVER DIST. Meadow Cr. to Ft. Defiance (Grades shown in feet per mile)

Maximum Grade:
21 ft. per mi. = 0.40%

CHESAPEAKE & OHIO RAILWAY CO.
Main Line
MEADOW CREEK TO FORT DEFIANCE
Office of
VALUATION ENGINEER
JUNE 25, 1921 RICHMOND, VA



PROFILE ~ GAULEY BRANCH (Grades shown in feet per mile)

Maximum Grades:
With the load ~ 376 ft per mile = 4.5 %
Against ~ ~ 317. . . 06 %

1376

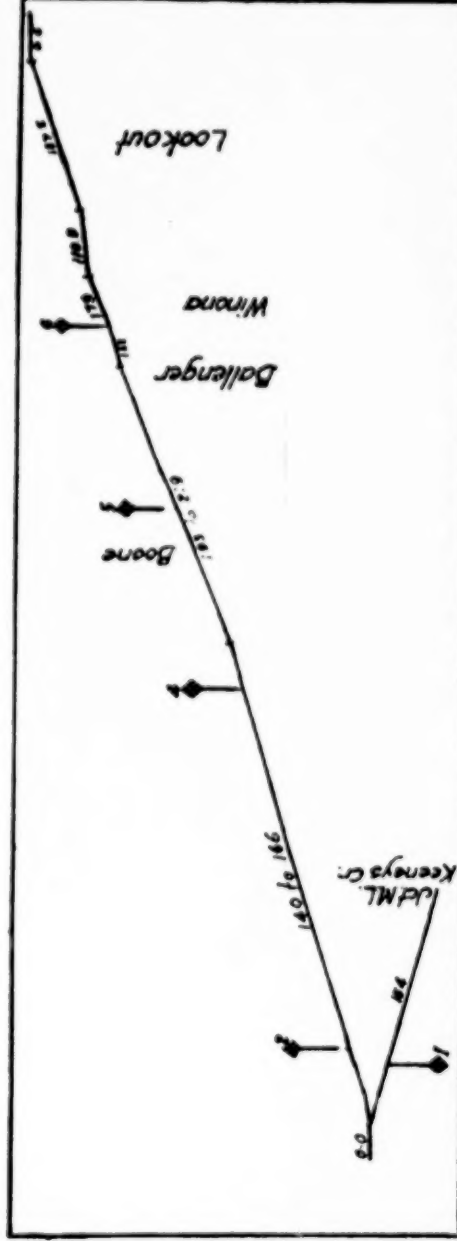
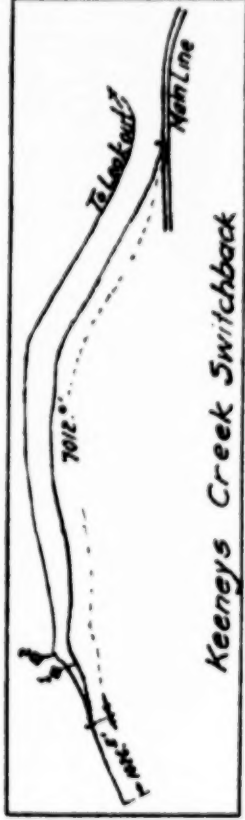
CHESAPEAKE & OHIO RY CO
GAULEY BR.

Office of Valuation Engineer

June 28, 1921 Richmond, Va

M3556-1

12



Scale: Hor. 1" = 5000'
Ver. 1" = 500'

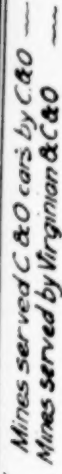
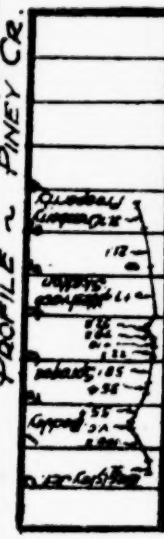
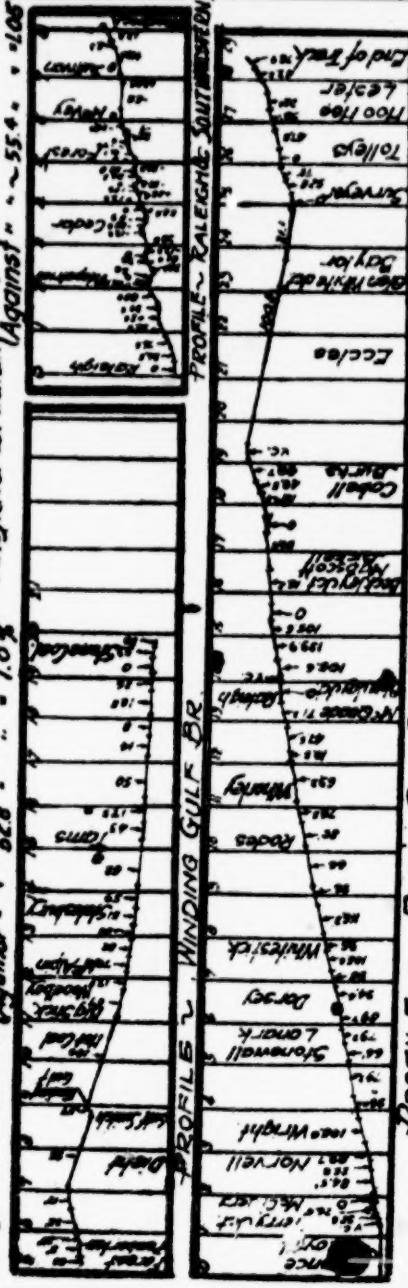
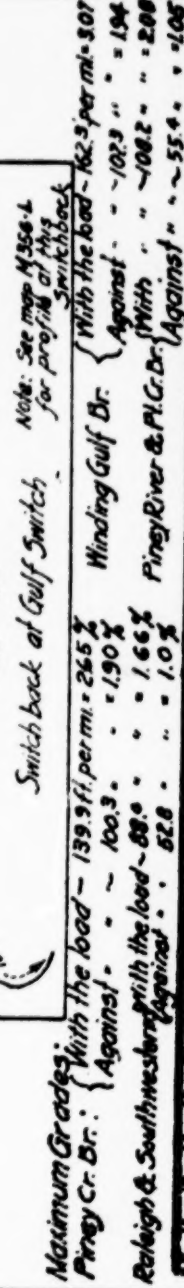
Maximum Grades:
With the load ~ 219 ft. per mile = 4.14 %
Against the load ~ 0.0 %

CHESAPEAKE & OHIO RY CO.
KEENEYS CR. BRANCH
Office of Valuation Engineer

June 25, 1921 Richmond, Va.

1377

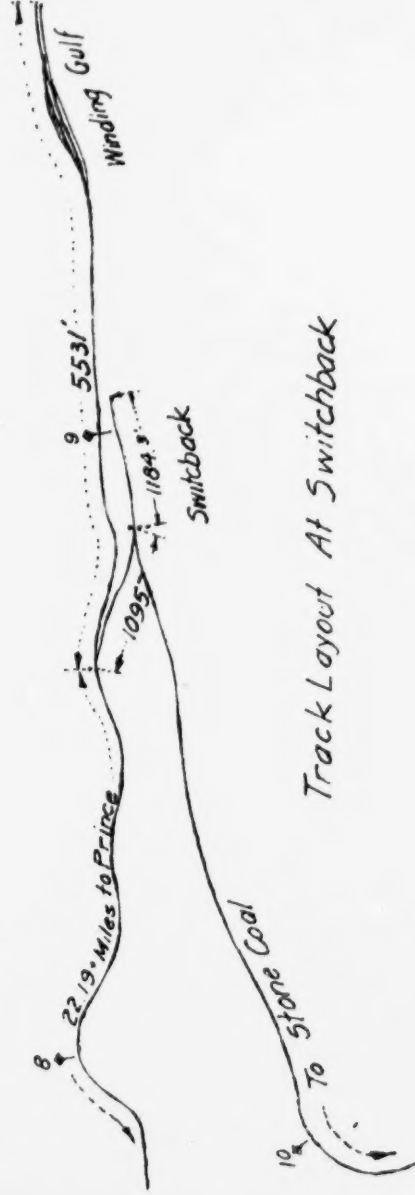
M356-J

[illegible]

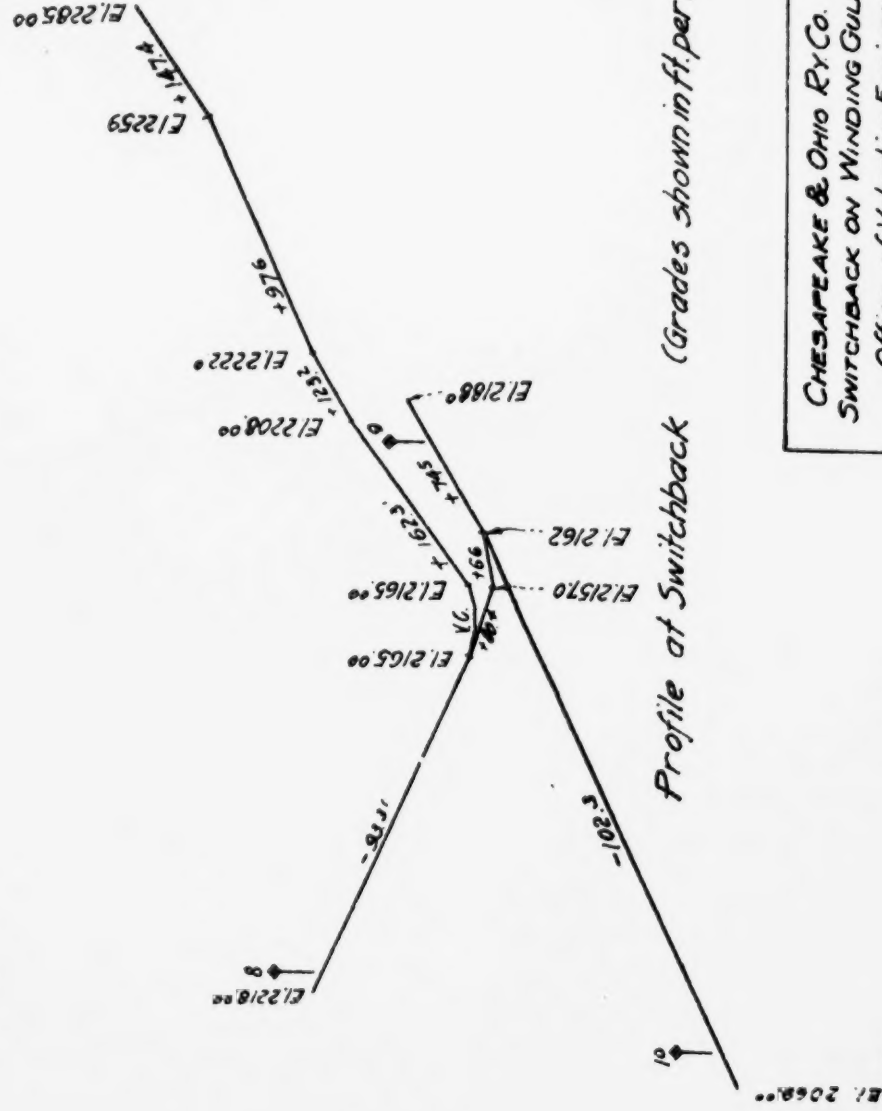
CHESAPEAKE & OHIO RY. CO.
PINEY CREEK BR. & ITS BRANCHES
Office of Valuation Engineer
June 26, 1921 Richmond, Va.

PROMISE - PINEY RIVER & PAINT CO. RV
1378

M-356K



Track Layout At Switchback



Profile at Switchback (Grades shown in ft. per mi.)

CHESAPEAKE & OHIO RY CO.
SWITCHBACK ON WINDING GULF BR.
Office of Valuation Engineer
June 25, 1921 Richmond, Va.



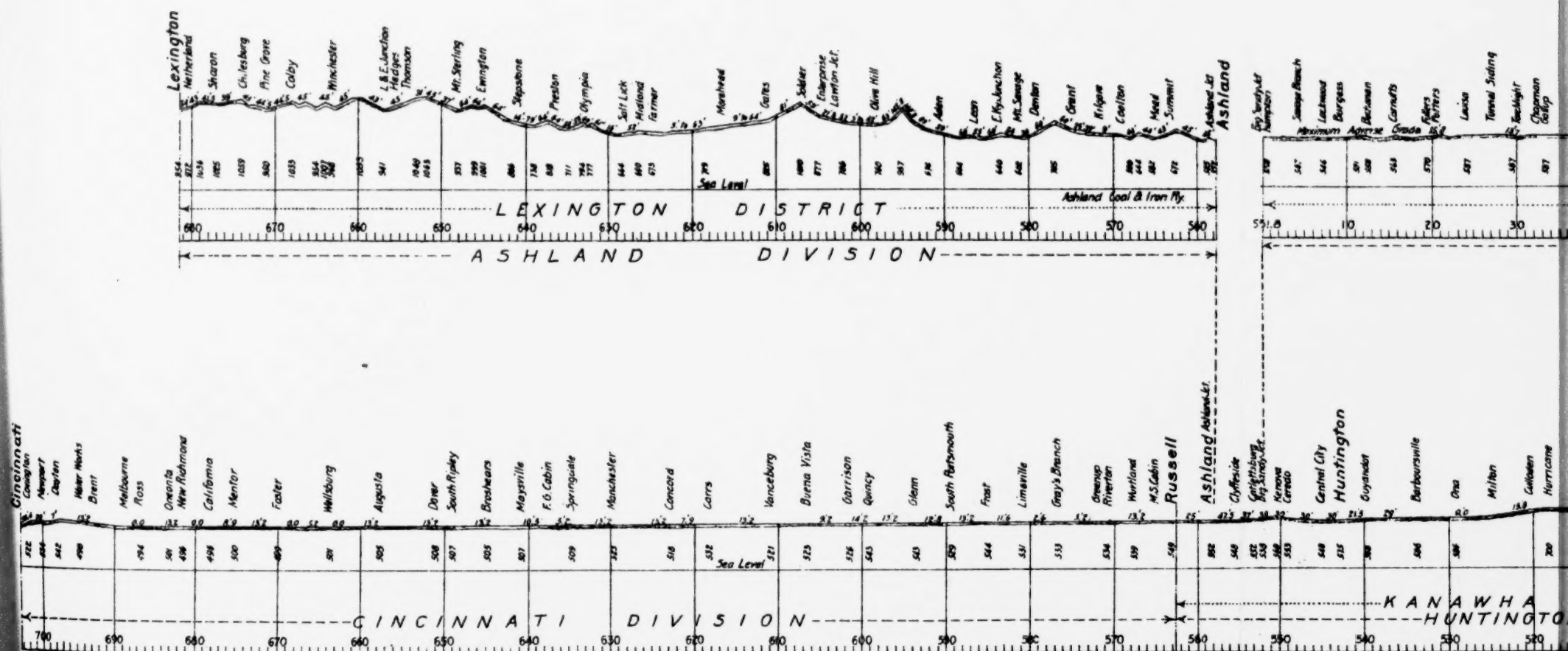
1380

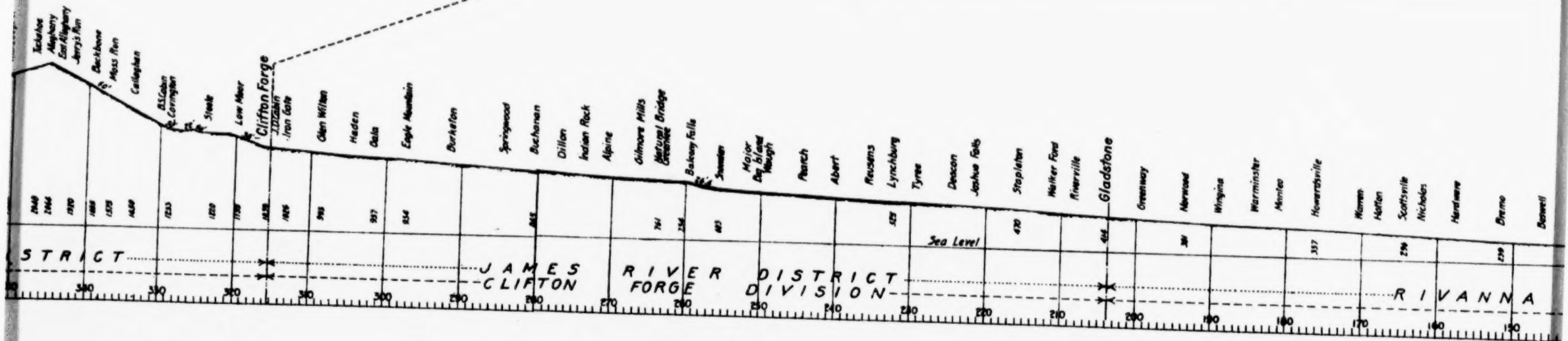
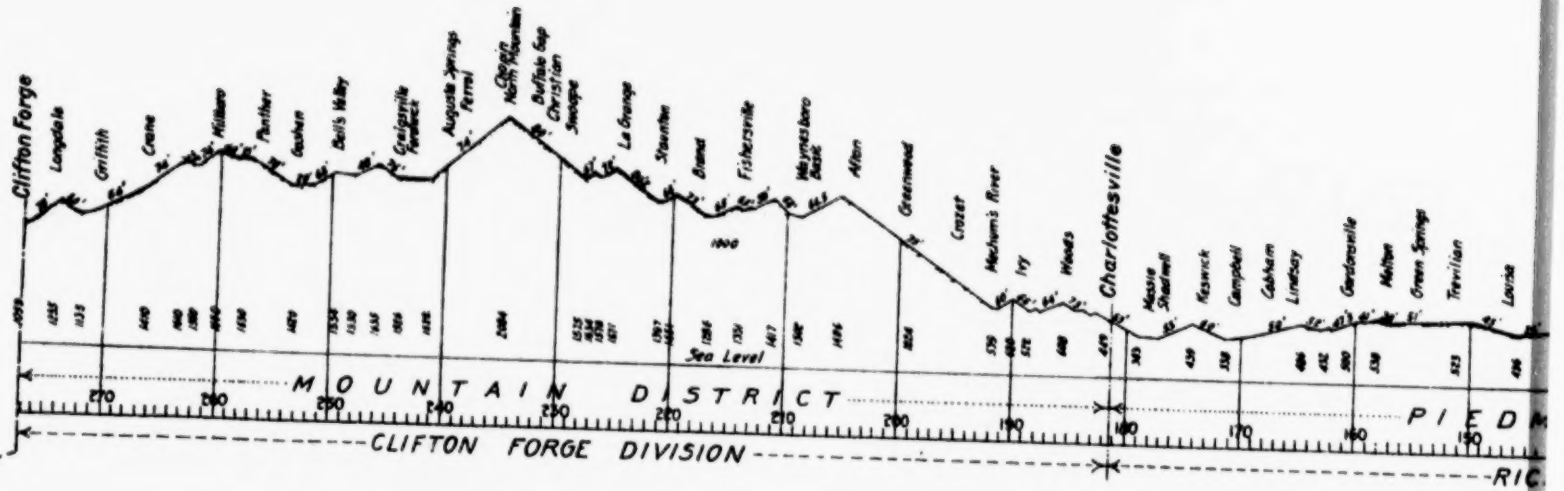
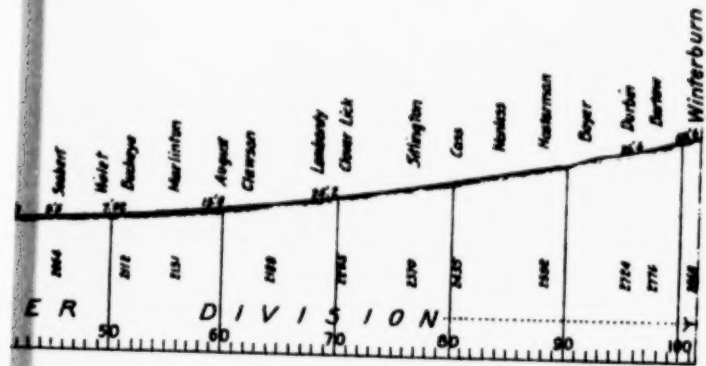
TRACK SITUATION
KILSYTH JUNCTION
Office of Valuation Engineer
June 25, 1921 Richmond Va.
M 256-

CHESAPEAKE & OHIO RAILWAY

CONDENSED PROFILE

1908







[fol. 1382] YARBROUGH—EXHIBIT No. 46

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 13832

Per Cent of Car Supply, Chesapeake & Ohio Railway, by
Districts

1920

	New River	Kanawha	Coal River	Logan	Kentucky	C. & O. field
Jan.	58.98	60.04	58.24	58.23	53.02	58.2
Feb.	46.49	54.57	55.76	56.60	47.33	52.9
Mar.	55.28	55.69	60.42	54.53	55.49	55.7
Apr.	46.28	43.04	42.95	42.49	40.87	43.8
May	37.26	36.96	40.10	40.89	42.04	39.2
June	38.45	41.59	46.03	46.87	36.55	42.5
July	55.21	47.57	48.26	47.35	41.28	48.4
Aug.	63.55	54.57	57.69	54.47	50.34	56.2
Sept.	50.57	60.46	51.77	61.82	59.34	57.8
Oct.	54.01	53.80	56.00	57.09	51.04	55.3
Nov.	54.34	53.81	49.82	47.40	53.04	51.1
Dec.	46.03	50.05	51.06	52.09	76.04	53.0
Average	54.4	50.8	51.5	51.8	50.1	51.1

[fol. 1383] C. & O. OPERATORS' EXHIBIT 47

Relative Car Supply of Local Mines on Virginian and
Chesapeake & Ohio for Period March 1, 1920, to January
1, 1921

	Aggregate daily rating (50-ton cars)		Aggregate cars received (50-ton basis)	
	C. & O.	Virginian	C. & O.	Virginian
March	440 1	424 2	5,720 2	7,060 7
April	455 6	438 3	4,300 2	6,921 9
May	468 5	438 5	3,801 4	4,979 9
June	490 4	477 3	3,582 1	6,517 6
July	575 3	412 1	6,180 8	7,606 8
August	530 5	464 1	7,127 0	7,025 1
September	487 6	451 8	4,869 9	6,748 4
October	530 6	443 2	5,663 9	7,107 9
November	540 8	447 5	5,607 9	6,790 2
December	543 7	465 3	5,008 2	5,212 8
Totals ..	5,063 1	4,462 3	51,861 6	65,971 3
Monthly average	506 3	446 2	5,186 1	6,597 1

Average equivalent full-day runs per month:

Chesapeake & Ohio Mines	10 2
Virginian Mines	14 9

[fol. 1384]

EXHIBIT No. 48

	Cars	Days	Average days per car
September, 1921:			
Michigan territory.....	40	886	22.15
Ohio—Indiana territory.....	45	645	14.33
Chgo.—Ill. & Beyond territory....	42	1,512	36.95
Total	127	3,043	23.96
October, 1921:			
Michigan territory.....	42	902	21.47
Ohio—Inc. “	42	883	21.02
Chgo.—Ill. & Beyond territory....	43	1,511	35.14
Total	127	3,296	25.95
September and October, 1921:			
Michigan territory, Sept.....	40	886	22.15
Oct.....	42	902	21.47
Total	82	1,788	21.81
Ohio Ind. territory, Sept.....	45	645	14.33
Oct.....	42	883	21.02
Total	87	1,528	17.56
Chgo.—Ill & Beyond trty., Sept....	42	1,512	36.95
Oct.....	43	1,511	35.14
Total	*85	3,023	35.56
All territory—Sept. and Oct., 1921.	254	6,339	24.95
Joliet & Gary, Sept. 1921.....	52	861	16.56
Oct. “	52	751	14.25
Total	104	1,612	15.60

*Includes 43 cars for points beyond Chicago which were away from N. & W. an average of 36.95 days per car.

Includes 3 cars for Minneapolis, Minn., which were away from N. & W. an average of 38.33 days per car.

Includes 3 cars for St. Louis, Mo., which were away from home an average of 42 days per car.

[fol. 1385]

EXHIBIT No. 49

Average Time N. & W. Open-top Cars Away from Home
Going to Destinations in Ohio, Ind., Ill., Mich., and Chgo.
Territory Last Six (6) Months Year 1920

	Cars	Days	Average
July, 1920.....	21	1,338	63.71 days
Aug., ".....	22	1,448	65.82 "
Sept., ".....	21	1,517	72.24 "
Oct. ".....	21	1,074	51.14 "
Nov. ".....	21	868	41.33 "
Dec. ".....	22	463	22.05 "
Total	128	6,708	52.41

[fol. 1386]

EXHIBIT No. 50

Average Time N. & W. Open-top Cars Away from Home
Going to Destinations in Ohio, Ind., Ill., Michigan, and
Chicago Territory First Six (6) Months 1922

	Cars	days	Average
Jan., 1922.....	22	377	17.14 days
Feby., ".....	22	331	15.05 "
March, ".....	22	403	18.31 "
April, ".....	22	344	15.64 "
May, ".....	23	287	12.48 "
June, ".....	21	426	20.29 "
Total	132	2,168	16.42 "

(Here follows Exhibit 51, side folio page 1387)

[fol. 1388]

EXHIBIT No. 52

Extract from Testimony of Mr. D. E. Spangler, General
Superintendent Transportation Norfolk & Western Rail-
way Company, in I. C. C. Docket No. 6324

Transportation Features Norton to Lamberts Point
(Tidewater)

Coal from Norton and vicinity (on N. & W. Ry.) origi-
nates in what is known as the Clinch Valley District, a

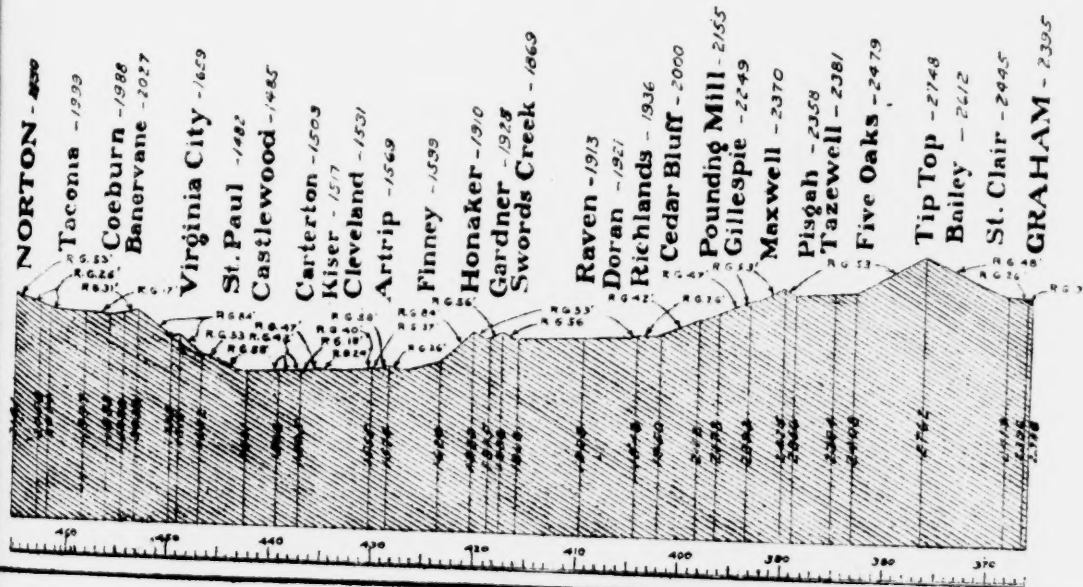
EXHIBIT 51

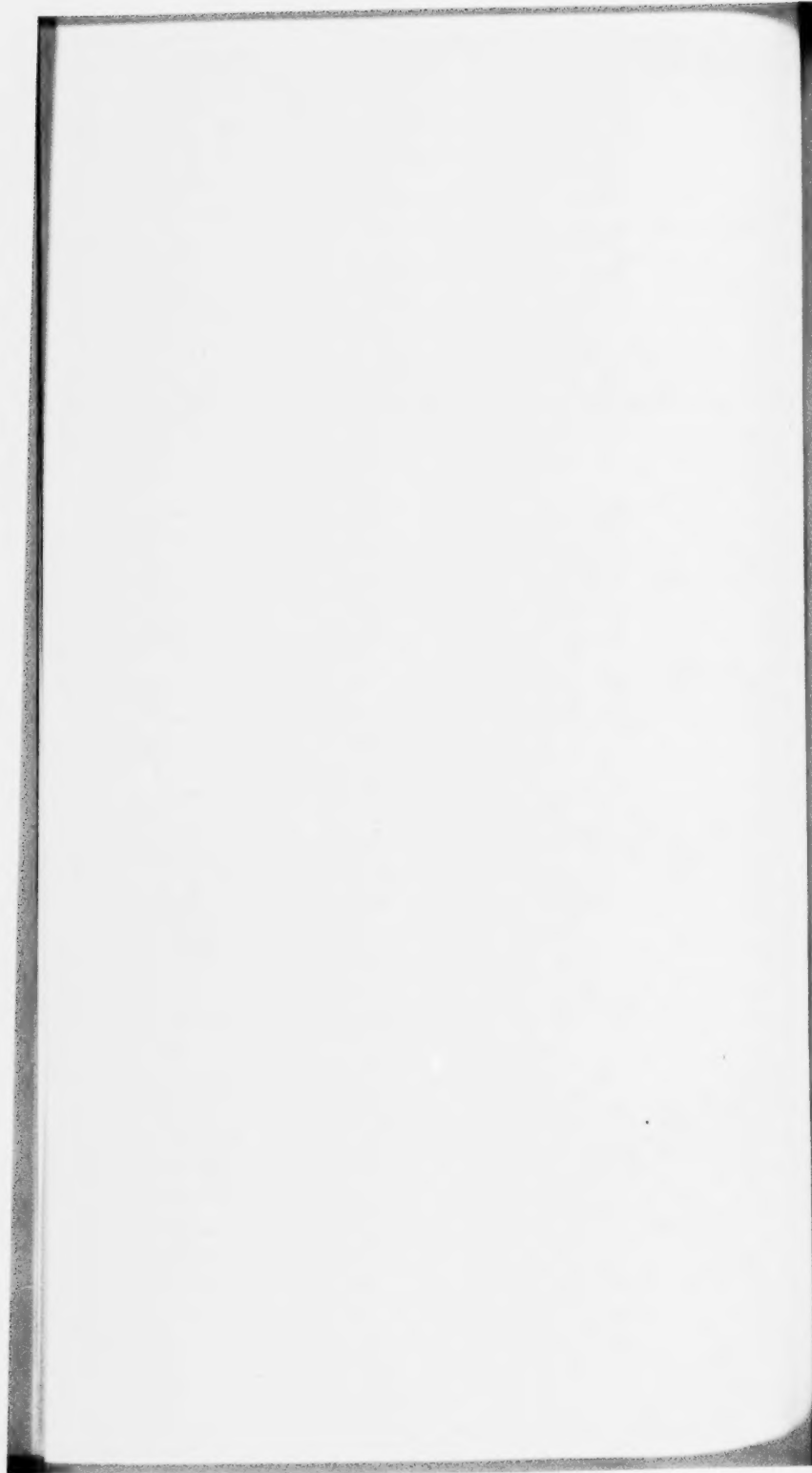
1387

Profile of the NORFOLK & WESTERN RY. GRAHAM VA. to NORTON VA. Showing Ruling Grades.

Scales { Hor. 1" = 10 miles
Ver. 1" = 1000 ft
Office of Chief Engineer Roanoke Va July 1910.
Elevations are Base of Rail

5660-E





division that presents some of the most difficult transportation problems for profitable operation, i. e.:

Trains operated between Norton and Bluefield, a distance of 104 miles.

Grades are heavy and numerous, the maximum being 1.6%.

Excessive curvature prevails the entire distance, the maximum being 16 degrees; average of 161 degrees and 3 minutes per mile of track; this is made more apparent by comparison with:

Bluefield to Roanoke	Roanoke to Norfolk
Maximum curvature 11 Deg. 30 Mins.	6 Deg. 0 Mins.
Av. Curv. per mile 96 Deg. 53 Mins.	25 Deg. 42 Mins.

Which shows: Maximum curvature on Clinch Valley one and half times that of the Radford Division, Bluefield to Roanoke, and more than two and one half times the Norfolk Division, Roanoke to Norfolk; and—

Average curvature per mile on Clinch Valley 1.6 times the Radford District between Bluefield and Roanoke over which all coal to Tidewater and the east must pass, and more than 6 times that on the Norfolk District east from Roanoke.

Ascending grades on Clinch Valley number 27, with total ascent of 1,898 feet.

To illustrate more clearly the difficulties of the grades and excessive curvature (which combined render large trains impossible) will state that the same unit of power will move:

Bluefield to Roanoke	3 3
Roanoke to Summit of Blue Ridge	1 2
Summit of Blue Ridge to Phœbe	3 6
Phœbe to Crewe	5 1
Crewe to Norfolk	4 3
[fol. 1389] Bluefield to Williamson	4 8
Williamson to Portsmouth, O.	3 8
And Portsmouth to Columbus	3 6

times the tonnage that can be moved on the Clinch Valley.

Comparing the line Bluefield to Columbus (more than three times the length of the Clinch Valley) it may be

stated: The maximum curvature equals only 75%, Average grade equals only 6%, Av. Curv. per mile equals only 52% that of Clinch Valley.

There are only 51 ascents, totaling but 824 feet Bluefield to Columbus, compared with 27 ascents totaling 1,898 feet Norton to Bluefield.

Average total cost per ton per mile of operation Clinch Valley District (last fiscal year) was:

- 1 5 times the whole road.
- 1 3 times the Pocahontas Dist. (including branches).
- 2 0 times the Kenova District.
- 1 9 times the Sciota District.
- 1 6 times the Radford District (Bluefield to Roanoke).
- 2 0 times the Norfolk District.

Leaving Bluefield towards Norfolk there is a long downward grade of about 23 miles to Glen Lyn, Va. The descent is 85 feet to the mile. Cautious train operation is essential to safety. Against this grade the empties must move returning west, making both eastbound and westbound movement slow and costly.

From Glen Lyn to Walton, the junction of the Bristol-Norfolk line there is a general upgrade, maximum 21 feet to the mile along New River. Leaving Walton trains ascend the grades of the Allegheny Mountain at 53 feet to the mile.

From Christianburg, at the summit of the Alleghenies trains must be brought down the eastern slope for a distance of about 12 miles over a descending grade of 70 feet to the mile; a tortuous route with many sharp curves requiring the greatest precaution and slow speed. The grade generally is downward to Roanoke. From Bluefield to Roanoke eastbound there are 35 ascending grades with a total ascent of 620 feet; the greater rise is confined to the 7 miles from Walton to the summit of the Allegheny Mountain where pusher service is required; the average curvature per mile is 96 degrees and 53 minutes Bluefield to Roanoke.

Leaving Roanoke the Blue Ridge Mountains are encountered, the summit is reached just east of Blue Ridge station, [fol. 1390] a rise of about 400 feet in 10 miles; the maximum grade is 1.15 per cent.

From the summit of the Blue Ridge Mountains to Norfolk the grade is generally downward, except between

Blue Ridge and Phœbe there is a ruling grade of 48 feet per mile. Pushers and helping engines are used between Roanoke and Phœbe. The total grade ascents from Roanoke east to Norfolk are 83; total ascent in feet 1796; the maximum curvature per mile is 6 degrees; the average curvature per mile 25 degrees and 42 minutes.

[fol. 1391]

EXHIBIT No. 53

INTERSTATE COMMERCE COMMISSION

Docket No 13832

Witness Huntington. Date Nov. 16, 1922

Defendants —. Steno. Chany.

[fol. 1392] Twelfth Annual Report of The Virginian Railway Company

For the Year Ended December 31, 1921

[fol. 1393] The Virginian Railway Company

Directors and Officers at December 31, 1921

Board of Directors

William E. Benjamin	New York.
William R. Coe	New York.
Charles H. Hix	Norfolk, Va.
Clarence W. Huntington	New York.
Godfrey M. Hyams	New York.
Edward W. Knight	Charleston, W. V.
Adrian H. Larkin	New York.
Edwin S. Marston	New York.
Noel McVickar	New York.
Henry H. Rogers	New York.
William H. Truesdale	New York.

Executive Committee

William R. Coe,	Godfrey M. Hyams,
Charles H. Hix,	Adrian H. Larkin,
Clarence W. Huntington,	Edwin S. Marston.

Officers

Clarence W. Huntington,	
President	New York.
Adrian H. Larkin,	
Vice President	New York.
Charles H. Hix,	
Vice President	Norfolk, Va.
George H. Church,	
Treasurer	New York.
James Clarke,	
Secretary	New York.
Ivins A. Browne,	
Assistant Treasurer	New York.
Hugh Clement,	
Assistant Treasurer)	
Assistant Secretary)	Norfolk, Va.
Henning Fernstrom,	
Chief Engineer.....	Norfolk, Va.
Edward W. Knight,	
General Counsel.....	Charleston, W. Va.
Samuel M. Adsit,	
Traffic Manager.....	Norfolk, Va.
William C. Everett,	
Auditor	Norfolk, Va.
Tom Moore,	
Purchasing Agent.....	Norfolk, Va.
General Offices	Norfolk, Va.
New York Offices	
President and Secretary	60 Wall Street.
Treasurer and Assistant Treasurer.....	55 Wall Street.
Registrar of Stock	Central Union Trust
	Company of New York.

Transfers of stock are made at the Company's office, 60 Wall Street, New York.

Annual Meeting of Stockholders, Saturday after fourth Tuesday in April, at Norfolk, Va.

[fol. 1394] To the Stockholders of the Virginian Railway Company:

Your Board of Directors submits herewith a report of the affairs of your Company for the year ended December 31, 1921.

An agreement was entered into on September 9, 1921, with the Director General of Railroads, United States Railroad Administration, covering the compensation to be paid for the use of your Company's property during the period of Federal control, which, under the provisions of the Transportation Act, 1920, terminated at midnight, February 29, 1920, and including also final settlement of accounts between your Company and the Railroad Administration in respect to charges for additions, improvements and equipment, as well as claims for under-maintenance, etc. The sum of \$2,308,094.84 in excess of the amount originally certified by the Interstate Commerce Commission as just minimum compensation on the basis of the standard return is included in this settlement. At the direction of the Interstate Commerce Commission, this additional compensation has been credited to Income Account in the year 1921.

Under this agreement, your Company received a net amount of \$2,100,000 in full adjustment and satisfaction of all claims and accounts between the two parties except the amount due to your Company from the United States Government in respect to guaranteed income for the six months ended August 31, 1920, under Section 209 of the Transportation Act, 1920, the provisions of which, as stated in the 1920 report, were duly accepted by your Company. As a further consideration in this settlement, it was agreed that charges included therein for additions and betterments made during Federal control would be funded to the amount of \$2,000,000 upon a note of your Company, with collateral security, and it was further understood that, if in the future the United States Railroad Administration has the power and an arrangement is made for general funding of addi-

tions and betterments, consideration will be given by the Administration to the funding of \$2,000,000 additional. This funding privilege has not as yet been availed of, but the matter is in progress at this time.

A claim on behalf of your Company against the United States Government for guaranteed railway operating income for the six months ended August 31, 1920, as provided under Section 209 of the Transportation Act, 1920, has been prepared and filed.

Section 15a of the Interstate Commerce Act requires that if, under the provisions of that Section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund. Under this provisions, the Interstate Commerce Commission issued an order dated January 16, 1922, that returns of income be made for the period from September 1 to December 31, 1920, by carriers which accepted the provisions of Section 209 of the Transportation Act, 1920. Such return was duly made by your Company. The Commission has since issued an order dated March 16, 1922, requiring a return for the year 1921, which has also been filed. Neither shows any amount due the Commission.

The valuation of your property by the Interstate Commerce Commission as of June 30, 1916, has continued to engage the attention of the accounting engineering and law departments of your Company. While sundry tentative reports and findings have been submitted on behalf of the Interstate Commerce Commission, and objections to portions thereof, supported by additional information, have been filed on behalf of your Company, no complete tentative report of the Commission's valuation has yet been served.

In January, 1922, the corporate name of your Company's subsidiary, the Virginian-Wyoming Railway Company, was changed to Virginian & Western Railway Company, and changes were made in its termini and route. The lease

of May 17, 1920, under which no operations had taken place, has been cancelled, and a revised lease for the term of 999 years from the Virginian & Western Railway Company to your Company is now before the Interstate Commerce Commission for approval and authorization. 14.45 miles of the Virginian & Western (Virginian-Wyoming) railway under construction, as heretofore reported, were completed and ready for operation in April, 1922. Pending approval and authorization of the lease mentioned, your Company will operate over said 14.45 miles under trackage agreement.

During the year, \$15,000 of the Virginian Limestone Corporation First Mortgage 5% Bonds were redeemed through operation of the sinking fund, leaving \$250,000 Bonds on hand at December 31, 1921.

The remaining equipment purchased under your Company's Equipment Trust, Series "C," referred to in the 1920 Report, was received and placed in operation during the year.

[fol. 1396] Mileage of lines owned was increased during the year 2.52 miles by construction of Upper Piney Creek Branch, which is an extension of Winding Gulf Branch.

Work on the double tracking of Clarks Gap Hill, which was unfinished in 1920, has been completed. There are now 16.16 miles of double track in operation between Mullens and Clarks Gap.

Annexed hereto is a detailed statement of mileage in operation at December 31, 1921.

At the close of the year, there were 107 coal mines (not including wagon mines) in operation on the main line, branches and connecting lines of your Company in Virginia and West Virginia, of which four began shipping during the year, and two additional mines were under way: 56 of the mines are served jointly by your railway and the Chesapeake & Ohio Railway, and one is served jointly by your railway and the Norfolk & Western Railway.

The following new industries were located on your line:

Manufacturers of Forest Products	8
Manufacturers of Fruit and Vegetable Baskets	1
Canning Factories	1
	—
Total	10

Engine House and Shop Facilities

The following increases in facilities at Elmore, W. Va., are completed and in use:

(a) 5-stall brick extension to Engine House and Machine Shop, 100' x 150'; rasing roof of present House, installing 10 ton crane, electric lights, heating and additional shop tools.

(b) Brick Storehouse, 60' x 63', with concrete platform.

(c) Fireproof Oil House, 22' x 45', with concrete platform.

(d) Blacksmith Shop, 38' x 40', wood frame covered with corrugated galvanized iron.

It was found economical to purchase rather than produce the electric current used for the power at Princeton Shops, necessitating the installation of transmission line, transformers and auxiliary apparatus for transforming and converting electric power, which is purchased from the Appalachian Power Company.

At Roanoke and Princeton, additional shop machinery has been installed.

[fol. 1397]

Buildings

Office building for Shops at Princeton, W. Va., which was partially destroyed by fire in 1921, has been rebuilt.

Combination Freight and Passenger Station, 10' x 24', was built at Perrow, Va.

Section Foreman's house was built at Whitethorne, Va.

Two bunkhouses were built at Elmore, W. Va.

Locker room and Foreman's office, 18' x 40', were built at Sewalls Point, Va.

Tunnels

Two double track tunnels on Clarks Gap Hill are being lined with concrete, viz.:

Clarks Gap.....	Length 1,236 feet
Micajah	“ 1,273 feet

Three tunnels between Mullens and Page were enlarged to permit running of Class AD Mallet Locomotives.

Passing Tracks

Grading has been completed and part of track laid for 1,730 ft. extension of Mullens passing track.

Bowyer passing track has been extended 3,772 feet. Grading for this track was completed in 1918.

4.98 miles of new track were laid in sidings, spur tracks and yards.

Bridges

Authority has been granted for replacing five timber bridges, aggregating 408 lineal feet, with permanent structures. At the close of the year, three of the bridges were under way.

An overhead timber highway bridge at Victoria was replaced with a steel structure.

Water and Coaling Stations

Water columns were installed at Fagg, Princeton and Amigo.

Well was drilled at Taber for Section Foreman's house.

A well at Norcross is being drilled.

An additional 50,000 gallon water tank was erected at Roanoke.

At Clarks Gap, the pump house was extended 15 feet, air compressor installed and 25 H. P. boiler replaced with 50 H. P. boiler.

Fencing

5.79 lineal track miles of fencing were constructed.

[fol. 1398]

Ballasting

97,348 cubic yards of crushed rock ballast were put in existing tracks.

Rail Renewals

65.35 miles of main track, formerly laid with 85 pound rail, were relaid with 100 pound A. R. A. Standard Type "B" rail, making a total of 234.15 miles now laid with rail of that weight.

A total of 4.97 miles of main track is now laid with 130 pound Pennsylvania section rail.

Miscellaneous

Installation of 120 ft. turntable at Victoria, replacing 80 ft. turntable was completed.

Work has been continued on ditching and tiling cuts on the Norfolk Division.

At Sewalls Point, a power line was constructed from the sub-station to provide cheaper power at the roundhouse and for lighting yard.

Fender system at Sewalls Point coal pier was renewed and widened.

At the end of the year, equipment of various classes undergoing repairs was represented by the following percentages:

Locomotives	11.72	per cent
Passenger Cars	3.23	" "
Freight Cars	10.72	" "

Herewith are submitted a General Balance Sheet at December 31, 1921, a General Income Account for the year to that date, together with the comparative figures of the previous year, and a Profit and Loss Account, to which is applied the Certificate of Messrs. Deloitte, Plender, Griffiths & Company, independent auditors, appointed to audit the books and accounts of your Company. Following these are detailed accounting and statistical statements relating to the business of the year and the condition of your Company's affairs at December 31, 1921. In comparing the results of the years 1920 and 1921, it may be noted that in the months of January and February, 1920, the property was still in the hands of the United States Government.

Your Directors take pleasure in recording their appreciation of the loyal and efficient service rendered by officers and employees.

By order of the Board.

Clarence W. Huntington, President.

New York, May 1, 1922.

[fol. 1399] Statement of Mileage in Operation December 31, 1921

	Dec. 31, 1921	Dec. 31, 1920	Increase
Lines Owned:			
Sewalls Point, Va., to Deepwater, W. Va. (25.87 miles of double track not included)	440.69	440.69	.....
Connection near Tidewater Junction, Va.	0.17	0.17	.....
Shockley Branch:			
Glen White Junction, W. Va., to connection with track of E. E. White Coal Company	1.62	1.62	.....
West Wye at Glen White Junction, W. Va.	0.33	0.33	.....
Winding Gulf Branch:			
Mullens, W. Va., to Leckie Operation No. 3	33.48	30.96	2.52
East Wye at Mullens, W. Va.	0.34	0.34	.....
Upper Winding Gulf Branch:			
Loop Junction, W. Va., to Winding Gulf, W. Va.	2.17	2.17	.....
Allen Creek Branch:			
Allen, W. Va., to Wyco, W. Va.	1.12	1.12	.....
Stone Coal Branch:			
Amigo, W. Va., to Princewick, W. Va.	9.05	9.05	.....
Devil's Fork Branch:			
Junction with Stone Coal Branch to Amigo Mine, W. Va.	1.09	1.09	.....
Lampkins Branch:			
Junction with Winding Gulf Branch at Fireco, W. Va., to Douglas Coal Co. Mine	1.26	1.26	.....
Guyandot River Branch:			
Junction with Main Line at Elmore, W. Va., to Pocahontas Coal Co.'s Mine...	1.26	1.26	.....
Beards Fork Branch:			
Beards Fork, W. Va., to Coal Mines.	2.49	2.49	.....
White Oak Railway Branch:			
Oakwood and Carlisle, W. Va., to Lochgelly, W. Va.	6.86		
Duncan's Crossing, W. Va., to Oak Oak Hill Jet., W. Va.	1.24	8.10	8.10
	503.17	500.65	2.52
Lines Leased:			
The Virginian Terminal Railway Company: Center of Boush Creek, Va., to end of Coal Pier (0.12 miles double track not included)	1.75	1.75	.....
	1.75	1.75	.....

	Dec. 31, 1921	Dec. 31, 1920	Increase
Tracks of Other Companies Used Jointly under Trackage Rights:			
Norfolk Southern Railroad:			
Norfolk, Va., to connection near Tidewater Junction, Va. (1.38 miles double track not included).....	1.74	1.74	.....
E. E. White Coal Company:			
End of Schockley Branch to Glen White, W. Va.	1.46	1.46	.....
Norfolk Terminal Railway Company:			
Norfolk, Va. (0.35 miles double track not included)	0.36	0.36	.....
The Chesapeake & Ohio Railway Company:			
Pemberton, W. Va., to Westwood, W. Va.	8.63	8.63	.....
Price Hill Jct., W. Va., to Price Hill, W. Va.....	2.29	2.29	.....
Piney River and Paint Creek Railroad:			
Beckley Jct., W. Va., to Prosperity, W. Va.	6.69	6.69	.....
	<u>21.17</u>	<u>21.17</u>	.....
Total Mileage Operated.....	526.09	523.57	2.52
First Track, operated.....	504.92	502.40	2.52
First Track, used jointly.....	21.17	21.17	.....
Second Track, operated.....	25.99	23.27	2.72
Second Track, used jointly.....	1.73	1.73	.....
Sidings and Yards.....	270.45	265.47	4.98
Total All Tracks.....	<u>824.26</u>	<u>814.04</u>	<u>10.22</u>
Mileage Operated by States:			
Virginia	333.50	333.50	.....
West Virginia	192.59	190.07	2.52
	<u>526.09</u>	<u>523.57</u>	<u>2.52</u>

The Virginian Railway Company
Balance Sheet—December 31, 1921

Assets

Investments:

Investment in Road and Equipment:

Cost of Road:

Amount December 31, 1920.....	\$83,003,587.95
Expended during the year (Net).....	2,057,987.88

\$85,061,575.83

Less: Depreciation Reserve—Set aside
during the year.....

506,749.51

\$84,554,826.32

Equipment:

Amount December 31, 1920.....	\$21,221,588.07
Expended during the year (Net).....	2,502,784.43

\$23,724,372.50

Less: Depreciation Reserve—

Amount December 31, 1920 \$2,329,243.52
Set aside during the year.. 337,231.63

21,057,897.35

\$105,612,723.67

Deposit in lieu of Mortgaged Property Sold:

The Farmers' Loan & Trust Company.....

26,000.00

Assets—Continued

Miscellaneous Physical Property:	
Leased rail and other materials	6,110.10
Investments in Affiliated Companies:	
Securities Pledged:	
The Virginian Terminal Railway Company:	
4,990 Shares Capital Stock of a par value of \$100 each	499,000.00
3,000 First Mortgage Bonds of a par value of \$1,000 each	3,000,000.00
Norfolk Terminal Railway Company:	
250 Shares Capital stock of a par value of \$100 each	25,000.00
Securities Unpledged:	
Loup Creek Colliery Company:	
8,000 Shares Capital Stock of a par value of \$100 each	3,524,000.00
1,288,000.00	

Norfolk Terminal Railway Company:	
3 Shares Capital Stock of a par value of \$100 each.....	300.00
Hinton, New River & Western Railway Company:	
100 Shares Capital Stock of a par value of \$50 each.....	5,000.00
Norfolk & Portsmouth Belt Line R. R. Co.:	
72 Shares Capital Stock of a par value of \$100 each.....	12,908.51
Marsh Fork Railway Company:	
50 Shares Capital Stock of a par value of \$100 each, 10% subscribed.....	500.00
Virginian-Wyoming Railway Company:	
500 Shares Capital Stock of a par value of \$100 each.....	50,000.00
Forward	1,356,708.51
	<u>\$4,912,818.61</u>
	<u>\$105,612,723.67</u>

Assets—Continued		
[fol. 1401] Forward		\$4,912,818.61
Investments: (Cont'd)		\$105,612,723.67
Advances:		
The Virginian Terminal Railway Company:		
For Betterments and Construction	915,158.13	
Virginian-Wyoming Railway Company:		
For Construction	1,588,575.04	
Marsh Fork Railway Company:		
For Construction	19,855.51	2,523,588.68
Other Investments:		
Securities Pledged:		
The Virginian Limestone Corporation:		
Ten Year Five Per Cent Gold Bonds	250,000.00	
Securities Unpledged:		
U. S. Government—Liberty Loan Bonds ..	6,500.00	
Loans and Bills Receivable	58,000.00	
Total Investments		314,500.00
		<u>7,750,907.29</u>
		<u>\$113,363,630.96</u>

Current Assets:

Cash in hands of:

Treasurer		
Assistant Treasurer	\$1,382,419.12	
Cash in transit from Agents and Conductors ..	508,108.96	
Cash on hand with Secretary for Directors and Executive Committee Fees	81,460.86	
	1,680.00	\$1,973,668.94
U. S. Government—Certificates of Indebted- ness		1,150,000.00
Special Deposit:		
Norfolk City Water Company		
Traffic and Car Service Balances Receivable ..		5.00
Net Balances Receivable from Agents and Conductors		146,918.41
		314,913.04
Miscellaneous Accounts Receivable:		
American Railway Express Company	8,278.01	
U. S. Government—Post Office Department ..	5,075.19	
Bills Collectible	380,331.40	
Freight Claim Recharge	2,117.71	
		395,802.31

Assets—Continued

Materials and Supplies.....	2,925,520.48	
Interest and Dividends Receivable.....	40,359.44	
Other Current Assets.....	76,266.24	
Total Current Assets.....		7,023,453.86
[fol. 1402] Deferred Assets:		
Working Fund Advances.....	1,912.10	
U. S. Government—Federal Liabilities Paid— February 29, 1920.....	350.84	
Interest on Advances—Virginian-Wyoming Railway Company.....	53,767.76	
Total Deferred Assets.....		56,030.70

Unadjusted Debits:

Insurance Premium paid in advance.....	5,388.85
Discount on Funded Debt—First Mortgage Bonds.....	475,741.40
Expenses in connection with First Mortgage Bonds.....	5,523.80
Discount on Funded Debt—Equipment Cer- tificates Series 114.....	275,513.34

Expenses in connection with Equipment Cer-
 tificates Series "C"
 Expenses in connection with Equipment Trust
 No. 76.

10,374.75

377.75

772,919.19

Freight Claims paid in suspense

6,604.88

Miscellaneous

203,320.49

Securities Issued or Assumed:

Pledged

3,000,000.00

Total Unadjusted Debits

982,844.56

[fol. 1403]

Capital Stock:

Common:

Authorized:

400,000 shares of a par value of \$100 each., \$40,000,000.00

Issued and Outstanding:

312,715 Shares

\$31,271,500.00

Liabilities

\$121,425,960.08

Liabilities—Continued

Preferred 5% Cumulative:

Authorized:

350,000 Shares of a par value of \$100 each. \$35,000,000.00

Issued and Outstanding:

279,550 Shares..... 27,955,000.00

Total Capital Stock.....

\$59,226,500.00

Long Term Debt:

Funded Debt Unmatured:

First Mortgage 5% Fifty Year Gold Bonds,
due 1962:

Authorized \$75,000,000.00

Issued 35,844,000.00

Held by or for the Company as per contra. 3,000,000.00

Actually outstanding.....

Equipment Trust No. 76, due 1921/35.....

Equipment Trust Series "C", due 1921/30.....

Loans from U. S. Government (Under

32,844,000.00

1,521,800.00

4,420,000.00

Transportation Act, 1920):

Due 1925.....	1,000,000.00
Due 1926.....	1,000,000.00

2,000,000.00

Total Long Term Debt.....

40,785,800.00

Current Liabilities:

Traffic and Car Service Balances Payable.....	118,131.82
---	------------

Audited Accounts and Wages Payable:

Audited Vouchers.....	1,171,962.49
Audited Pay Roll.....	454,839.96

1,626,802.45

Miscellaneous Accounts Payable:

Agents' Drafts for Advances.....	5,606.26
Conductors' Excess Fares.....	51.80

5,658.06

Unmatured Interest Accrued:

Equipment Trust Certificates Series "C"...	66,300.00
First Mortgage Bonds.....	273,700.00
Equipment Trust No. 76.....	41,849.50
Loans and Bills Payable.....	45,000.00

426,849.50

Liabilities—Continued

[fol. 1404] Unmatured Rents Accrued:

Rental—The Virginian Terminal Railway Company	5,833.34
---	----------

The Virginian Terminal Railway Company:

First Mortgage 5% Fifty Year Gold Bonds Guaranteed.....	25,000.00	30,833.34
---	-----------	-----------

Other Current Liabilities:

Prepay in Transit.....	15,884.12
------------------------	-----------

Total Current Liabilities.....	2,224,159.29
--------------------------------	--------------

Deferred Liabilities:

Contractors' Reserves.....	9,381.41
----------------------------	----------

U. S. Government:

Federal Assets Collected.....	771.11	
Agents' and Conductors' Balances—February 29, 1920.....	24,428.08	25,199.19

Total Deferred Liabilities.....	34,580.60
---------------------------------	-----------

Unadjusted Credits:

Tax Liabilities.....		\$434,365.59
Operating Reserves.....		143,182.62

Other Unadjusted Credits:

Liberty Loan Bond Subscriptions.....	\$1,007.50
U. S. Government War Tax.....	35,767.83

The Virginian Terminal Railway Company:

Salvage recovered from Mortgaged Prop- erty retired.....	798.91
Miscellaneous	536,676.31
Total Unadjusted Credits.....	574,250.55

Corporate Surplus:

1,151,798.76

Additions to Property through Surplus.....

586,400.89

Profit and Loss:

Balance as per account after payment of
\$13.00 per share on account of dividends
accrued on 279,550 shares Preferred
Stock from May 1, 1912.....

17,416,720.54

Total Corporate Surplus.....

18,003,121.43

\$121,425,960.08

[fol. 1405] The Virginian Railway Company
Comparative Statement of Income Account

	Dec. 31, 1921 Year ended	Year 1920	
		Federal operation, Jan. and Feb.	Corporate operation, Mar. to Dec. Total
Operating Revenue:			
From Freight	\$15,681,361.00	\$1,836,677.63	\$13,901,140.20
From Passenger, including excess baggage and club car fares	978,765.34	111,155.25	798,530.71
From Mail	69,538.42	50,140.36	46,658.89
From Express	63,076.74	12,278.18	50,281.37
From Miscellaneous	1,231,615.46	158,852.22	1,193,138.47
Gross Revenue	\$18,024,356.96	\$2,169,103.64	\$15,989,749.64
Operating Expenses:			
Maintenance of Way and Structures	\$2,547,898.20	\$264,367.63	\$1,965,229.20
Maintenance of Equipment	3,902,349.03	532,786.60	3,177,424.46
Traffic Expenses	123,080.17	8,433.20	91,734.86
Transportation Expenses	5,540,613.22	994,729.87	5,518,805.88
Miscellaneous Operations	36,574.50	5,805.98	36,797.92
			\$2,229,596.83
			3,710,211.06
			100,168.06
			6,513,535.75
			42,603.90

General Expenses	369,514 66	28,946 08	350,688 12	379,634 20
Transportation for Investment Cr.	114,301 79	11,385 92	55,381 72	66,767 64
Total Operating Expenses	<u>\$12,405,727 99</u>	<u>\$1,823,683 44</u>	<u>\$11,085,298 72</u>	<u>\$12,908,982 16</u>
Net Revenue from Operation	\$5,618,628 97	\$345,420 20	\$4,904,450 92	\$5,249,871 12
Taxes	1,043,174 80	90,000 00	1,026,491 70	1,116,491 70
Uncollectible Railway Revenue	370 52	195 55	15 33	210 88
Income from Operation	<u>4,575,083 65</u>	<u>255,224 65</u>	<u>3,877,943 89</u>	<u>4,133,168 54</u>
Add:				
Rent of tracks, yards, terminals, etc.	63,727 39	7,337 08	41,855 51	49,192 59
Dividend Income—The Virginian Terminal Railway Company	300,000 00			
Dividend Income—Norfolk Terminal Railway Company	1,265 00			
Hire of Equipment	118,396 45	7,951 02	615,559 69	623,510 71
From Other Sources	316,202 18	81,956 52	284,209 32	366,165 84
Gross Income	<u>\$5,374,674 67</u>	<u>\$352,469 27</u>	<u>\$4,819,568 41</u>	<u>\$5,172,037 68</u>

Comparative Statement of Income Account—Continued

	Year ended Dec. 31, 1921	Year 1920		
		Federal opera- tion, Jan. and Feb.	Corporate operation, Mar. to Dec.	Total
Deductions:				
Interest on Funded Debt	\$1,642,200.00		\$1,572,016.67	\$1,572,016.67
Interest on Equipment Trust Notes	363,414.61		94,521.49	94,521.49
Interest on Loan from U. S. Government	114,552.37		13,000.00	13,000.00
Other Interest	6,541.84		54,043.87	54,043.87
Discount on First Mortgage Bonds and Equipment Notes written off during the year	77,219.40		31,344.79	31,344.79
Rent of tracks, yards, termi- nals, etc.	215,438.23	\$4,355.99	209,779.61	214,135.60
Income Tax on Bond Interest due by holders of the bonds, but assumed by the Com- pany	12,773.22			
Miscellaneous	4,802.89	55.00		
			17,330.03	17,330.03
			53,435.29	53,490.29
Total Deductions	\$2,436,912.56	\$4,410.99	\$2,045,471.75	\$2,049,882.74

Net Income	\$2,937,732.11	\$348,058.28	\$2,774,096.66	\$3,122,154.94
Minimum Compensation based on Standard Return for two months, 1920				
Additional Compensation received from U. S. Govt., for rent of property during Federal Control years 1918, 1919 and two months, January and February, 1920 ..	\$2,308,094.84		\$513,365.01	\$513,365.01
Net Income Carried to Profit and Loss	\$5,245,826.95		\$3,287,461.67	
Average Mileage in Operation	526.09	523.57	523.57	523.57
Total Operating Revenue per Mile of Road	\$34,260.98	\$4,142.91	\$30,539.85	\$34,682.76
Net Operating Revenue per Mile of Road	\$10,679.98	659.74	\$9,367.33	\$10,027.07
Ratio of Operating Expenses to Operating Revenues	68.83%	84.08%	69.33%	71.09%

[Vol. 1406]

The Virginian Railway Company
Profit and Loss Account, Year Ended December 31, 1921

Balance: at Credit December 31, 1920..... \$13,877,031.46

Add:

Additional Rental Received from U. S. Government (Railroad Administration) in final settlement reached on September 9, 1921, applicable to the following years:

1918	\$1,052,396.59
1919	1,052,396.59
Jan. & Feb., 1920.....	203,301.05
	<hr/> \$2,308,094.84*

Dividend on Capital Stock of The Virginian Terminal Railway Company ... 300,000.00
Net Income for year ended December 31, 1921..... 2,637,732.11

Total Net Income Transferred from General Income Account	\$5,245,826.95
Unrefundable Overcharges	2,145.98
Donations by Individuals and Companies account of Additions and Betterments.....	246,261.06
Miscellaneous Credits	7,063.36
	<hr/> 5,501,297.35

Deduct:

Dividend on 279,550 shares of Preferred Stock:

January 31, 1921, \$3.00 per share.....	\$838,650.00
June 30, 1921, \$3.00 per share.....	838,650.00
	<hr/> 1,677,300.00

Surplus appropriated for Investment in Physical Property

Loss on Retired Road and Equipment.....	246,261.06
Cost of Kentucky Surveys Written off.....	7,765.82
	29,717.89
Miscellaneous Debits	623.50
	<hr/> 1,961,608.27

Balance: at Credit December 31, 1921..... \$17,416,720.54

* Note.—The Company desired to credit this amount to Profit and Loss direct but were refused permission by the Interstate Commerce Commission and instructed to credit the amount to Income Account.

[fol. 1407] Deloitte, Plender, Griffiths & Co., Accountants
and Auditors

49 Wall Street, New York, March 20th, 1922.

To the Directors of The Virginian Railway Company:

We have made an examination of the books and accounts of The Virginian Railway Company for the year ended December 31st, 1921, and subject to the fact that the account with the United States Government for the operation of the Railroad during the guaranty period is still subject to settlement, we certify that the accompanying Balance Sheet, Income Account and Profit & Loss Account correctly set forth the financial position of the Company as at December 31st, 1921, and the result of operations for the year ended that date.

We have examined the charges to Property and Equipment Accounts during the year and in our opinion they are proper charges to Capital Account.

The Securities owned have either been produced to us for inspection or verified by certificates obtained direct from the various banks and trust companies in whose custody they were on December 31st, 1921, and the cash items have been substantiated.

Deloitte, Plender, Griffiths & Co. Public Accountants.

[fol. 1408] Additions to Cost of Road and Equipment During the Year

Main Line:

Engineering	\$20,687.21
Land for Transportation Purposes	22,821.26
Grading	200,881.42
Tunnels and Subways	540,122.40
Bridges, Trestles and Culverts	104,764.58
Ties	44,457.76
Rails	185,491.68
Other Track Material	61,248.17
Ballast	201,509.68
Track Laying and Surfacing	167,168.28
Right of Way Fences	10,134.75
Crossings and Signs	21,172.36
Station and Office Buildings	21,158.34

Main Line—Continued:

Roadway Buildings	11,540.07
Water Stations	25,921.30
Fuel Stations	
Shops and Enginehouses	129,201.65
Gas Producing Plants	22.13
Telegraph and Telephone Line	11,459.80
Signals and Interlockers	14,677.80
Power Plant Buildings	3,995.58
Power Transmission System	40.88
Power Distribution Lines	542.97
Power Line Poles and Fix- tures	575.94
Miscellaneous Structures	1,144.34
Roadway Machines	5,544.87
Roadway Small Tools	198.88
Assessment for Improve- ments	32.56
Shop Machinery and Tools	78,262.11
Power Plant Machinery	31,068.60
Power Substation Apparatus	72.36
Law	8,925.49
Interest during Construction	23,112.53

 \$1,944,538.93

Branches:

Allen Branch	\$146.00
Beards Fork Branch	751.55
Shockley Branch	3,681.24
Guyandot Valley Branch	344.65
Lampkin Branch	27,639.71
Laurel Fork Branch	38,339.58
Piney Creek Branch	42,208.31
Kentucky Surveys	38,750.03
Stone Coal Branch	39,087.94

 113,448.95

 Total Addition to Main Line and
Branches ..

 \$2,057,987.88

Equipment:

336 109-ton Coal Cars	\$2,046,230.69	
10 All Steel Passenger Coaches	346,646.52	
4 All Steel Mail and Baggage Cars	113,960.60	
1 All Steel Club Car (Winding Gulf)	54,144.00	
Work Cars transferred from freight service	70,912.43	
Freight Cars transferred from work service	1,750.00	
Wrecking outfit purchased during Federal Control, but disapproved by Board of Directors, settled on 55% of cost	44,457.32	
Application of Type D Couplers to freight cars	18,804.76	
Reinstating 5 Freight Cars formerly vacated	3,390.19	
Forward	\$2,700,296.51	\$2,057,987.88
[fol. 1409]		
Forward	\$2,700,296.51	\$2,057,987.88
Building up side bearings on 109-ton coal cars	2,250.04	
Improvements to club and business cars	2,114.19	
Application of electric headlights to locomotives	2,216.79	
Application of automatic stokers to locomotives	16,013.74	
Improvements to baggage cars	678.76	
Application of steel underframes to freight cars	577.14	
Experimental soot blower for one locomotive	363.66	
Automobile for Roanoke, Va., Soliciting Freight Agent	587.94	
Improvements in connection with rebuilding Mallet locomotive #600	2,825.19	

Equipment—Continued:

Preliminary charges for building Mikado locomotive #410 and Mallet locomotive #610 with material salvaged from Triplex Mallet locomotive #700 dismantled	1,211 37
Application power reverse gears to locomotives	745 60
Miscellaneous delayed charges and adjustments in connection with Federal Valuation, Cr.	18,425 07
	<hr/> \$2,711,455 86

Deduct:

Equipment destroyed, sold, converted and retired:

Charged to other Companies ...	\$82,130 82	
Charged to depreciation	25,630 73	
Charged to other Equipment Accounts account of conversions	72,662 43	
Charged to Profit and Loss ...	23,199 08	
Salvage	5,048 37	
	<hr/>	208,671 43

Total Additions to Equipment	<hr/> \$2,502,784 43
------------------------------------	----------------------

Total Additions to Road and Equipment	\$4,560,772 31
---	----------------

Deduct:

Reserve for Ac-
crued Deprecia-
tion and adjust-
ments to same
including cred-
its for rein-
statements of
equipment . . . \$362,862 36

Less: Appropri-
ated for equip-
ment sold, re-
tired, converted
and destroyed . . . 25,630 73

\$337,231 63

Reserve for Ac-
crued Deprecia-
tion and adjust-
ments to same
for road . . . 507,405 00

Less: Appropri-
ated for re-
tirements . . . 655 49

506,749 51

Total Reserve for Accrued Deprecia-
tion . . . \$843,981 14

Net Additions to Cost of Road \$1,551,238 37

Net Additions to Cost of
Equipment . . . 2,165,552 80

Net Additions to cost of Road and
Equipment . . . \$3,716,791 17

[fol. 1410] Capital Stock and Funded Debt

The authorized issues of the capital stock and funded
debt of the company and the amounts outstanding are as
follows:

Capital Stock

Common:

Authorized . . . \$40,000,000 00
Issued and Outstanding . . . \$31,271,500 00

Preferred Five Per Cent Cumulative:

Authorized	35,000,000 .00	
Issued and Outstanding		\$27,955,000 .00
Total issued and outstanding		<u>\$59,226,500 .00</u>

First Mortgage Bonds

First Mortgage Five
Per Cent Fifty Year
Gold Bonds, due
1962:

Authorized	\$75,000,000 .00	
Issued		\$35,844,000 .00

Less:

Held by or for
the Company:

Pledged	\$3,000,000 .00	
		<u>3,000,000 .00</u>

Amount issued and outstanding		<u>\$32,844,000 .00</u>
-------------------------------------	--	-------------------------

Equipment Trust Obligations

Equipment Trust No. 76 Notes:

Original issue	\$1,630,500 .00	
Outstanding December 31, 1920	\$1,630,500 .00	
Paid during year	108,700 .00	
		<u></u>
Outstanding December 31, 1921		\$1,521,800 .00
Equipment Trust Series "C" Certificates:		
Original issue	\$5,200,000 .00	
Outstanding December 31, 1920	\$4,940,000 .00	
Paid during year	520,000 .00	
		<u></u>
Outstanding December 31, 1921		\$4,420,000 .00
Outstanding December 31, 1921		<u>\$5,941,800 .00</u>

[fol. 1411] Statement of Accrued Interest on Funded Debt During the Year Ended December 31, 1921

Description	Principal	Date of maturity	Accrued Interest	
			Rate	Due
First Mortgage Bonds	\$32,844,000 00	May 1, 1962	5%	May and November
Equipment Trust No. 76	1,521,800 00	January 15, 1935	6%	January and July
Equipment Trust Series "C"	4,420,000 00	April 1, 1930	6%	April and October
Total				\$2,011,979.75

Guaranteed Bonds of The Virginian Terminal Railway Company

First Mortgage Bonds	\$3,000,000 00	May 1, 1927	5%	May and November	\$150,000 00
----------------------	----------------	-------------	----	------------------	--------------

The Virginian Railway Company, jointly with the Norfolk & Western Railway Company, has guaranteed, by endorsement, the First Mortgage Bonds of the Norfolk Terminal Railway Company, in which guaranty the Norfolk Southern Railroad Company is joined by a separate agreement. There was, however, no liability incurred under such guaranty for interest during the year ended December 31, 1921.

[fol. 1412]

Table No. 1

Statement of Freight Transportation for the Years Ended
December 31, 1921, and 1920

Months	Number of tons	Tons one mile	Revenue
January, 1921	605,278	201,791,787	\$1,522,341 14
February, "	369,705	165,903,970	960,128 92
March, "	401,713	142,455,462	1,022,352 16
April, "	544,067	183,393,188	1,333,893 22
May, "	745,825	272,671,077	1,839,128 32
June, "	717,596	269,798,650	1,777,143 99
July, "	533,714	195,761,142	1,324,992 26
August, "	504,908	176,681,730	1,213,041 15
September, "	448,850	157,692,560	1,081,344 60
October, "	594,802	208,826,090	1,418,508 47
November, "	521,842	198,601,206	1,236,127 66
December, "	388,348	134,473,015	952,359 11
Totals for year ended Dec. 31, 1921	6,376,648	2,308,049,877	\$15,681,361 00
Totals for year ended Dec. 31, 1920	7,784,517	2,848,422,083	15,737,817 83
Decrease	1,407,869	540,372,206	\$56,456 83

[fol. 1413]

Table No. 2

Statement of Passenger Transportation for the Years
Ended December 31, 1921, and 1920

Months	Number of passengers	Passengers one mile	Revenue
January, 1921	110,232	2,377,699	\$85,568 59
February, "	100,827	1,911,870	68,645 01
March, "	104,891	2,010,421	74,484 41
April, "	97,382	1,931,941	69,760 90
May, "	107,492	2,219,476	80,597 95
June, "	106,028	2,492,846	83,406 01
July, "	118,512	3,157,626	101,537 79
August, "	113,505	3,157,638	95,907 56
September, "	100,613	2,679,861	80,830 56
October, "	90,875	1,886,837	68,221 30
November, "	98,189	2,159,502	71,064 74
December, "	106,962	2,113,822	76,554 68
<hr/>			
Totals for year ended Dec. 31, 1921	1,255,508	28,099,539	\$956,579 50
Totals for year ended Dec. 31, 1920	1,226,141	28,627,794	885,697 50
<hr/>			
Increase	29,367		\$70,882 00
Decrease		528,255	

[fol. 1414]

Table No. 3

Comparative Statement of Operating Expenses for the Years Ended
December 31, 1921, and 1920

	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Maintenance of Way and Structures:		
Superintendence	\$129,062.36	\$109,571.92
Roadway Maintenance.....	257,197.57	330,368.65
Roadway Depreciation.....	48,948.00	.....
Tunnels and Subways.....	18,411.77	14,939.98
Bridges, Trestles and Culverts.....	81,920.61	121,923.17
Bridges, Trestles and Culverts—Depreciation	61,200.00	.....
Ties	473,719.59	355,548.76
Rails	168,944.24	59,533.90
Other Track Material.....	257,213.25	110,567.03
Ballast	31,818.38	78,373.63
Track Laying and Surfacing.....	585,914.34	636,204.01
Right of Way Fences.....	4,616.47	4,267.12
Crossings and Signs.....	18,102.07	5,976.52
Crossings and Signs—Depreciation.....	1,044.00	.....
Station and Office Buildings.....	27,663.20	17,938.16
Station and Office Buildings—Depreciation	3,180.00	.....
Roadway Buildings.....	2,132.06	3,617.78
Water Stations.....	15,803.39	28,186.89
Water Stations—Depreciation.....	4,944.00	.....
Fuel Stations.....	19,836.77	8,138.87
Fuel Stations—Depreciation.....	4,104.00	.....
Shops and Engine Houses.....	76,400.13	79,957.89
Shops and Engine Houses—Depreciation.....	13,080.00	.....
Wharves and Docks.....	.....	.....
Wharves and Docks—Depreciation.....	2,460.00	.....
Coal and Ore Wharves.....	74,037.86	88,315.03
Coal and Ore Wharves—Depreciation.....	30,444.00	.....
Telegraph and Telephone Lines.....	33,733.42	70,549.33
Signals and Interlockers.....	20,916.19	26,959.18
Power Plant Buildings.....	4,861.89	1,044.28
Power Plant Buildings—Depreciation.....	312.00	.....
Power Substation Buildings.....	8.31	.....
Power Substation Buildings—Depreciation	264.00	.....
Power Transmission Systems.....	21.39	.....
Power Distribution Systems.....	1,535.64	.....
Power Line Poles and Fixtures.....	110.49	.....
Miscellaneous Structures.....	17.67	148.36
Roadway Machines.....	7,197.30	7,325.50
Small Tools and Supplies.....	37,679.08	20,340.14
Removing Snow, Ice and Sand.....	4,636.76	1,658.01
Injuries to Persons.....	2,200.00	22,952.55
Insurance	3,466.25	6,123.40
Stationery and Printing.....	5,791.20	3,868.35
Other Expenses.....	2,480.40	348.52
Maintaining Joint Tracks, Yards and Other Facilities—Dr.....	22,136.09	21,344.06
Maintaining Joint Tracks, Yards and Other Facilities—Cr.....	11,668.54	4,405.00
Total	<u>\$2,547,898.20</u>	<u>\$2,229,506.85</u>
Ratio to total operating expenses.....	20.54%	17.27%
Ratio to operating revenue.....	14.14%	12.28%

Maintenance of Equipment:

	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Superintendence	\$108,941.74	\$111,474.18
Shop Machinery	51,601.96	45,762.38
Shop Machinery—Depreciation	20,400.00	
Power Plant Machinery	23,160.82	24,332.25
Power Plant Machinery—Depreciation	5,448.00	
Power Sub-Station Apparatus—Depreciation	1,872.00	
Steam Locomotives—Repairs	1,685,341.61	1,684,339.55
Steam Locomotives—Depreciation	114,250.82	117,920.86
Freight Train Cars—Repairs	1,374,341.87	1,344,402.22
Freight Train Cars—Depreciation	329,404.90	217,437.33
Freight Train Cars—Retirements	13,662.25	3,059.62
Passenger Train Cars—Repairs	70,822.38	75,297.09
Passenger Train Cars—Depreciation	12,672.14	5,817.24
Passenger Train Cars—Retirements	421.03	612.37
Floating Equipment—Repairs	3,822.68	6,084.80
Floating Equipment—Depreciation	382.87	382.91
Work Equipment—Repairs	42,880.19	38,825.91
Work Equipment—Depreciation	11,144.57	6,615.46
Miscellaneous Equipment—Repairs	404.24	
Miscellaneous Equipment—Depreciation	589.07	125.04
Injuries to Persons	4,730.58	7,209.32
Insurance	12,531.78	6,798.99
Stationery and Printing	6,473.65	5,238.62
Other Expenses	1,390.50	691.04
Maintaining Joint Equipment at Terminals—Dr.	5,611.38	9,008.62
Total	\$3,902,349.03	\$3,710,211.06
Ratio to Total Operating Expenses	31.46%	28.74%
Ratio to Operating Revenue	21.65%	20.43%

[fol. 1415] Traffic Expenses:

Superintendence	\$57,148.71	\$53,420.37
Outside Agencies	32,796.02	23,508.97
Advertising	4,143.08	2,369.24
Traffic Association	2,345.12	1,349.00
Insurance	70.89	309.72
Stationery and Printing	26,576.35	19,491.17
Other Expenses		19.59
Total	\$123,080.17	\$100,168.06
Ratio to total operating expenses .....	.99%	.78%
Ratio to operating revenue .....	.68%	.55%

Transportation Expenses:

Superintendence	\$141,837.74	\$139,197.88
Dispatching Trains	133,897.50	160,270.79
Station Employees	324,417.11	352,986.87
Weighing, Inspection and Demurrage Bureaus	7,968.14	6,716.75
Coal and Ore Wharves	612,872.65	882,626.52
Station Supplies and Expenses	15,607.89	16,105.41
Yardmasters and Yard Clerks	91,074.44	100,482.96
Yard Conductors and Brakemen	197,049.28	253,952.04
Yard Switch and Signal Tenders	6,797.35	6,333.84
Yard Enginemen	96,133.84	115,525.81

	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Transportation Expenses (Continued):		
Fuel for Yard Locomotives.....	151,485.52	168,255.14
Water and Yard Locomotives.....	16,277.14	16,667.19
Lubricants for Yard Locomotives.....	1,273.95	3,810.96
Other Supplies for Yard Locomotives....	1,830.90	1,516.19
Enginehouse Expenses—Yard.....	59,749.44	74,063.75
Yard Supplies and Expenses.....	4,629.70	5,637.08
Operating Joint Yards and Terminals—Dr.	17,322.86	22,038.51
Operating Joint Yards and Terminals—Cr.	13,441.52	4,424.56
Train Enginemmen.....	594,795.61	791,964.45
Fuel for Train Locomotives.....	1,417,797.90	1,567,880.31
Water for Train Locomotives.....	73,370.65	69,602.80
Lubricants for Train Locomotives.....	29,861.35	30,606.78
Other Supplies for Train Locomotives...	28,087.35	35,820.23
Enginehouse Expenses—Train.....	415,152.55	458,265.18
Trainmen	612,311.10	776,659.61
Train Supplies and Expenses.....	88,258.19	100,886.11
Signal and Interlocker Operation.....	29,578.97	31,314.35
Crossing Protection.....	9,408.10	9,720.79
Drawbridge Operation.....	8,999.07	9,174.44
Telegraph and Telephone Operation.....	4,979.51	5,160.24
Stationery and Printing.....	22,469.76	25,805.57
Other Expenses.....	40,027.02	35,736.90
Operating Joint Tracks and Facilities—Dr.	24,452.20	13,643.82
Operating Joint Tracks and Facilities—Cr.	3,167.58	8,169.78
Insurance	1,490.18	4,395.37
Clearing Wrecks.....	77,295.32	71,582.73
Damage to Property.....	130,924.33	9,952.69
Damage to Live Stock and Right of Way	8,198.12	13,955.50
Loss and Damage—Freight.....	41,502.53	73,424.09
Loss and Damage—Baggage.....	387.74	376.71
Injuries to Persons.....	14,619.32	53,914.13
Total	<u>\$5,540,613.22</u>	<u>\$6,513,535.75</u>
Ratio to total operating expenses.....	44.66%	50.46%
Ratio to operating revenue.....	<u>30.74%</u>	<u>35.87%</u>
Miscellaneous Operations:		
Dining and Buffet Service.....	\$36,567.45	\$42,308.97
Hotels and Restaurants.....	.....	.....
Other Miscellaneous Operations.....	7.05	294.93
Total	<u>\$36,574.50</u>	<u>\$42,603.90</u>
Ratio to total operating expenses.....	.29%	.33%
Ratio to operating revenue.....	<u>.20%</u>	<u>.24%</u>

[fol. 1416]

Table No. 4

Operating Revenue, Expenses and Net Revenue for the Years Ended December

		Coal and coke freight	Other freight	Passengers and excess baggage	Mail and express	Miscellaneous	Total 1921
January, 1921		\$1,391,061 14	\$131,280 00	\$85,776 14	\$6,510 31	\$78,507 16	\$1,693,134 75
February, "		817,968 61	142,160 31	68,840 48	13,774 99	87,652 75	1,130,397 14
March, "		872,116 61	150,235 55	74,681 26	8,071 68	72,501 62	1,177,606 72
April, "		1,162,442 78	171,450 44	69,941 10	21,184 68	100,877 56	1,525,896 56
May, "		1,690,388 25	148,740 07	80,827 95	10,257 35	135,159 90	2,065,373 52
June, "		1,617,583 25	159,560 74	83,652 24	9,899 96	133,544 25	2,004,240 44
July, "		1,167,346 40	157,645 86	101,777 55	9,464 86	113,290 07	1,549,524 74
August, "		1,040,492 24	172,548 91	96,144 55	9,123 93	130,344 49	1,448,654 12
September, "		916,829 47	164,515 13	81,130 64	10,196 89	99,036 32	1,271,708 45
October, "		1,232,942 07	185,566 40	68,417 88	10,430 38	88,539 21	1,585,895 94
November, "		1,045,326 64	190,801 02	71,345 76	10,898 86	87,606 27	1,405,978 55
December, "		788,897 12	163,461 99	76,771 67	12,801 27	124,013 98	1,165,946 03
Totals, Year Ended Dec. 31, 1921		\$13,743,394 58	\$1,937,966 42	\$959,307 22	\$132,615 16	\$1,251,073 58	\$18,024,356 96
Totals, Year Ended Dec. 31, 1920		14,213,767 03	1,524,050 80	909,685 96	159,358 80	1,351,990 69	
Increase			\$413,915 62	\$49,621 26			
Decrease		\$470,372 45			\$26,743 64	\$100,917 11	\$134,496 32

Table No. 4

and Net Revenue for the Years Ended December 31, 1921, and 1920

Mail and express	Miscellaneous	Total		Operating expenses		Net operating revenue	
		1921	1920	1921	1920	1921	1920
\$6,510 31	\$78,507 16	\$1,693,134 75	\$1,298,987 40	\$1,216,289 99	\$878,496 49	\$476,844 76	\$420,490 91
13,774 99	87,652 75	1,130,397 14	891,314 24	986,544 50	874,566 59	143,852 64	16,747 65
8,071 68	72,501 62	1,177,606 72	1,396,000 25	902,544 07	992,669 16	275,062 65	403,331 09
21,184 68	100,877 56	1,525,896 56	1,325,901 64	890,892 26	1,016,798 56	635,004 30	309,103 08
10,257 35	135,159 90	2,065,373 52	961,176 81	1,133,919 06	802,511 51	931,454 46	158,665 30
9,899 96	133,544 25	2,004,240 44	1,370,536 03	1,110,872 81	985,552 11	893,367 63	384,983 92
9,464 86	113,290 07	1,549,524 74	1,578,770 91	961,484 79	1,175,481 00	588,039 95	403,289 91
9,123 93	130,344 49	1,448,654 12	1,676,132 76	974,267 80	1,310,919 01	474,386 32	365,213 75
10,196 89	99,036 32	1,271,708 45	2,016,492 51	976,947 62	1,128,239 94	294,760 83	888,252 57
10,430 38	88,539 21	1,585,895 94	2,036,938 06	1,129,745 32	1,265,836 67	456,150 62	771,101 39
10,898 86	87,606 27	1,405,978 55	1,888,506 95	1,079,213 18	1,186,534 25	326,765 37	701,972 70
12,801 27	124,013 98	1,165,946 03	1,718,095 72	1,043,006 58	1,291,376 87	122,939 44	426,718 85
\$132,615 16	\$1,251,073 58	\$18,024,356 96	.....	\$12,405,727 99	.....	\$5,618,628 97	.....
159,358 80	1,351,990 69	.....	\$18,158,853 28	.....	\$12,908,982 16	.....	\$5,249,871 12
.....	.....	.....	.....	.....	.....	\$368,757 85	.....
\$26,743 64	\$100,917 11	\$134,496 32	.....	\$503,254 17	.....	.....	.....

General Expenses:	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Salaries and Expenses of General Office..	\$71,004.46	\$75,310.74
Salaries and Expenses of Clerks and Attendants	150,501.42	170,284.54
General Office and Expenses.....	19,179.74	18,020.00
Law Expenses.....	31,166.87	33,207.99
Insurance	165.21	482.10
Stationery and Printing.....	11,523.97	13,542.76
Valuation Expenses.....	34,000.31	23,034.52
Other Expenses.....	22,000.35	20,504.15
General Joint Facilities—Dr.....	307.33	737.04
Total	\$300,514.00	\$370,634.20
Ratio to total operating expenses.....	2.98%	2.94%
Ratio to operating revenue.....	2.05%	2.00%
Transportation for Investment—Cr.....	\$114,301.70	\$93,707.64
Ratio to total operating expenses.....	.92%	.52%
Ratio to total operating revenue.....	.63%	.37%
Total operating expenses.....	\$12,405,727.90	\$12,908,982.16
Ratio to operating revenue.....	68.83%	71.60%

(Here follows Table No. 4, slide folio (page 1416))

[fol. 1417]

Table No. 5

Classification of Freight Carried on the Virginian Railway for the Years Ended December 31, 1921, and 1920

Products of Agriculture:		Year ended Dec. 31, 1921, tons	Year ended Dec. 31, 1920, tons	Increase	Decrease
Commodity					
Wheat		1,588	1,431	157	
Corn		5,605	3,986	1,619	
Oats		2,178	2,267		89
Other Grain		77	178		101
Flour and Meal		19,680	8,196	11,484	
Other Mill Products		9,624	12,070		2,446
Hay, Straw and Alfalfa		9,236	10,430		1,194
Tobacco		2,224	2,193	31	
Cotton		83	212		129
Cotton Seed and products, except oil		458	285	173	
Citrus Fruits		280	467		187
Other Fresh Fruits		1,748	1,847		99
Potatoes		1,380	1,087	293	
Other Fresh Vegetables		305	641		336
Dried Fruits and Vegetables		1,141	693	448	
Other Products of Agriculture		4,401	3,338	1,063	
Products of Animals:					
Horses and Mules		258	283		25
Cattle and Calves		129	162		33
Sheep and Goats			40		40

Hogs	10	20	409	10
Fresh Meats	512	43	228	311
Other Packing House Products	511	283	153	16
Poultry	133		31	182
Eggs	54	23		143
Butter and Cheese	561	872		
Wool	16			
Hides and Leather	1,007	825		
Other Products of Animals	264	121		
Products of Mines:				
Coal—Anthracite	13,225	9,686	3,539	
Coal—Bituminous	5,691,790	7,145,731	1,453,941	
Coke	313	55	258	
Iron Ore	75		75	
Other Ores and Concentrates	20	50		30
Base Bullion and Matte		31		31
Clay, Gravel, Sand and Stone				
Crude Petroleum	208,790	104,855	103,935	
Asphaltum				
Salt	1,424	215	1,209	
Other Products of Mines	7,398	3,599	3,799	
		125		125
Products of Forests:				
Logs, Posts, Poles and Cord Wood	22,715	36,896	14,181	
Ties	12,101	23,153	11,052	
Pulpwood	1,875	1,202	673	
Lumber, Timber, Box Shooks, Staves and Headings	124,574	171,127	46,553	
Other Products of Forests	1,675	2,524	849	

Classification of Freight Carried on the Virginian Railway for the Years Ended December 31, 1921,
and 1920—Continued

[fol. 1418] Commodity	Manufactures and Miscellaneous:			
	Year ended Dec. 31, 1921, tons	Year ended Dec. 31, 1920, tons	Increase	Decrease
Refined Petroleum and its Products	13,195	9,864	3,331	
Vegetable Oils	30	198		168
Sugar, Syrup, Glucose and Molasses	3,816	3,205	611	
Boat and Vessel Supplies	25		25	
Iron, Pig and Bloom	345	4,557		4,212
Rails and Fastenings	6,103	11,658		5,555
Bar and Sheet Iron, Structural Iron and Iron Pipe	12,201	15,694		3,493
Other Metals, Pig Bar and Sheet	258	58	200	
Castings, Machinery and Boilers	3,320	5,127		1,807
Cement	12,465	7,698	4,767	
Brick and Artificial Stone	18,205	14,226	3,979	
Lime and Plaster	12,348	12,444		96
Sewer Pipe and Drain Tile	2,097	1,554	543	
Agricultural Implements and Vehicles, other than au- tomobiles	6,497	6,540		43
Automobiles and Auto Trucks	2,537	1,753	784	
Household Goods and Second-Hand Furniture	3,077	5,124		2,047
Furniture (new)	666	517	149	
Beverages	621	668		47
Ice	4,469	3,709	760	

MAPS

TOO

LARGE

FOR

FILMING

Fertilizers (all kinds)	16,270	21,738	5,468
Paper, Printed Matter and Books	9,323	4,420	57
Chemicals and Explosives	3,519	158	4,903
Textiles	6,332	6,606	3,361
Canned Goods (all canned food products)	26,569	28,191	274
Other Manufactures and Miscellaneous	62,922	67,511	1,622
Merchandise—All L. C. L. Freight			4,589
Total Revenue Tonnage	6,376,648	7,784,517	1,407,869

(Here follows table No. 6, side folio pages 1419 and 1420)

[fol. 1421]

Table No. 7

Performance of Locomotives for the Years Ended December 31, 1921,
and 1920

Number of Miles Run :	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
On Freight Trains.....	1,439,603	1,831,958
On Passenger Trains.....	684,979	659,642
On Mixed Trains.....	.....	16,818
On Special Trains.....	1,308	559
Switching	537,777	587,171
On Non-Revenue Trains.....	119,105	115,045
Total	2,782,772	3,211,193
Cost :		
Wages, Engineers and Firemen.....	\$690,929.45	\$907,490.26
Enginehouse Expenses.....	474,901.90	532,328.93
Fuel for Locomotives.....	1,569,283.42	1,736,135.65
Water	89,647.79	86,269.99
Lubricants	31,135.30	34,477.74
Other Supplies.....	20,918.25	37,336.42
Repairs	1,685,341.61	1,684,339.55
Total	\$4,571,157.81	\$5,018,378.54
Average Cost Per 100 Miles Run :		
Wages, Engineers and Firemen.....	\$24.83	\$28.26
Enginehouse Expenses.....	17.07	16.58
Fuel for Locomotives.....	56.39	54.97
Water	3.22	2.69
Lubricants	1.12	1.07
Other Supplies.....	1.08	1.16
Repairs	60.56	52.45
Total	\$164.27	\$156.28

[fol. 1422]

Table No. 8

Traffic and Mileage Statistics for the Years Ended December 31, 1921,
and 1920

Freight Traffic :	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Tons of revenue freight carried.....	6,376,648	7,784,517
Tons (revenue freight) carried 1 Mile...	2,308,049,877	2,848,422,083
Tons (revenue freight) carried 1 Mile per mile of road	4,387,177	5,440,384
Average distance carried per ton (Miles)	361.95	365.91
Total revenue, freight.....	\$15,681,361.00	\$15,737,817.83
Average revenue per ton of freight (Cents)	245.92	202.17
Average revenue per ton per mile (Cents)	0.679	0.553
Freight revenue per mile of road.....	\$29,807.37	\$30,058.67
Freight revenue per train mile (Cents)...	1,230.58	949.38

Passenger Traffic:	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Passengers carried	1,255,608	1,226,141
Passengers carried 1 mile.....	28,099,539	28,627,794
Passengers carried 1 mile per mile of road	53,412	54,678
Average distance carried per passenger (Miles)	22.38	23.35
Total passenger revenue (including excess baggage and club car seat fares).....	\$978,765.34	\$909,685.96
Average revenue from passengers (Cents)	76.19	72.24
Average revenue per passenger per mile (Cents)	3.40	3.09
Total passenger train revenue (including mail, express and club cars).....	\$1,116,863.05	\$1,069,044.76
Passenger train revenue per mile of road	\$2,122.84	\$2,041.84
Passenger train revenue per train mile (Cents)	163.60	159.40
Total Traffic:		
Gross operating revenue	\$18,024,356.96	\$18,158,853.28
Gross operating revenue per mile of road	\$34,260.98	\$34,682.76
Gross operating revenue per train mile (Cents)	921.04	785.39
Operating expenses	\$12,405,727.99	\$12,908,982.16
Operating expenses per mile of road....	\$23,581.00	\$24,655.69
Operating expenses per train mile (Cents)	633.93	558.33
Net revenue from transportation.....	\$5,618,628.97	\$5,249,871.12
Net revenue from transportation per mile of road	\$10,679.98	\$10,027.07
Net revenue from transportation per train mile (Cents)	287.11	227.06
Ratio of operating expenses to operating revenue	68.83%	71.09%
Taxes	\$1,043,174.80	\$1,116,491.70
Ratio of operating expenses (including taxes) to operating revenue.....	74.62%	77.24%
Taxes per mile of road.....	\$1,982.88	\$2,132.46

[fol. 1423]

Table No. 9

Statement of Traffic and Mileage Statistics for the Years Ended
December 31, 1921, and 1920

Train Mileage:	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Revenue Freight Trains	1,273,922	1,640,870
Revenue Passenger Trains	681,777	653,833
Revenue Mixed Trains .....	.....	16,818
Revenue Special Trains	1,264	559
Non-Revenue Trains	119,048	113,750
Total	2,076,011	2,425,830

Locomotive Mileage:	Year ended Dec. 31, 1921	Year ended Dec. 31, 1920
Revenue Freight Trains	1,439,603	1,831,958
Revenue Passenger Trains	684,970	659,642
Revenue Mixed Trains .....	.....	16,818
Revenue Special Trains	1,308	559
Switching Locomotives	537,777	587,171
Non-Revenue Trains	119,105	115,045
Total	2,782,772	3,211,133
Car Mileage:		
Mileage of Loaded Freight Cars:		
North and East	38,887,162	53,126,394
South and West	2,662,893	2,583,540
Mileage of Empty Freight Cars:		
North and East	824,571	415,944
South and West	36,664,859	50,895,227
Mileage of Caboose Cars.....	1,273,922	1,640,870
Average number of Freight Cars per train mile, excluding caboose.....	62.04	65.22
Average number of loaded freight cars per train mile.....	32.62	33.95
Average number of empty freight cars per train mile, excluding caboose....	29.43	31.27
Average number tons freight per train mile (including Company freight)...	1,908	1,793
Average number tons freight per train mile (excluding Company freight)...	1,812	1,718
Average number tons freight per loaded car mile (including Company freight)	58.48	53.32
Average number tons freight per loaded car mile (excluding Company freight)	55.55	51.10
Mileage of Passenger Cars.....	3,214,842	3,631,592
Average number Passenger cars per train mile	4.72	4.64
Average number of passengers per train mile	41.22	42.69
Mileage of Cars in special service.....	9,633	5,270
Average mileage operated during year	526.09	523.57

[fol. 1424]

EXHIBIT No. 54

Chesapeake & Ohio Railway Coal Loadings from Mine of MacAlpin Coal Company, MacAlpin, W. Va., and Mine of E. E. White Coal Company, Statesbury, W. Va. (Being Mines Served Jointly by the Chesapeake & Ohio Railway and Virginian Railway)

Month	MacAlpin Coal Co., MacAlpin, W. Va.			E. E. White Coal Co., Statesbury, W. Va.		
	Tide- water	Inland east	Inland west	Tide- water	Inland east	Inland west
1921						
January	.....	1,680	4,410	7,720	.....	250
February	.....	3,680	1,030	280	710	250
March	.....	750	1,010	2,050	950	1,050
April	6,720	4,470	550	1,160	1,240	9,340
May	750	1,860	2,450	5,130	1,940	5,780
June	.....	1,150	3,390	6,160	1,310	2,270
July	3,090	550	1,850	280	1,320	7,120
August	2,640	3,780	5,090	200	3,320	6,460
September	.....	1,740	3,360	.....	1,100	10,400
October	.....	6,830	16,820	200	400	11,370
November	.....	4,840	9,440	.....	200	6,280
December	.....	.....	500	490	980	2,650
1922						
January	.....	4,310	13,370	1,820	500	9,940
February	.....	2,030	24,230	50	180	14,590
March	.....	2,420	8,230	8,630	1,170	6,620
April	.....	2,220	5,910	9,050	100	2,450
May	.....	2,370	13,390	9,060	11,810	2,710
June	6,890	1,150	5,350	14,940	350	9,070
July	4,890	650	7,250	6,030	3,740	2,500
August	7,180	700	930	3,620	3,340	1,090
September	5,960	.....	1,690	4,500	840	2,740
Total	38,150	47,180	130,190	81,680	36,790	114,930
Percentage ..	17.7%	21.9%	60.4%	35%	15.8%	49.2%

[fol. 1425]

EXHIBIT No. 55

Interstate Commerce Commission

Docket No. 13832

Witness: Traugott. Date: Nov. 16, 1922. Steno: Charvy

Contract Between East Gulf Coal Co. & the Virginian Railway Co., Dated May 17th, 1919. Mine Track Layout—
Berry Branch M. P. 10.3, Winding Gulf Branch

Mr. P. C. Thomas, Assistant General Manager East Gulf
Company, Helen, W. Va.

DEAR SIR: In accordance with your letter of the 15th instant in reply to mine of the 5th instant, I am attaching to the contract dated May 17, 1919, between the East Gulf Coal Company, Inc., and the Virginian Railway Company, as a part thereof, blueprint dated September 16, 1919, revised October 7th, 1920, file No. A-1571, which has been approved by you, to take the place of blueprint dated March 24th, 1919, showing the location of mine track constructed under said agreement at Station 723, M. P. 10.3, Winding Gulf Branch.

You will please attach the enclosed copy of revised blueprint to said contract, advising me when you have done so.

Yours truly, (S.) A. M. Traugott, Assistant Chief
Engineer.

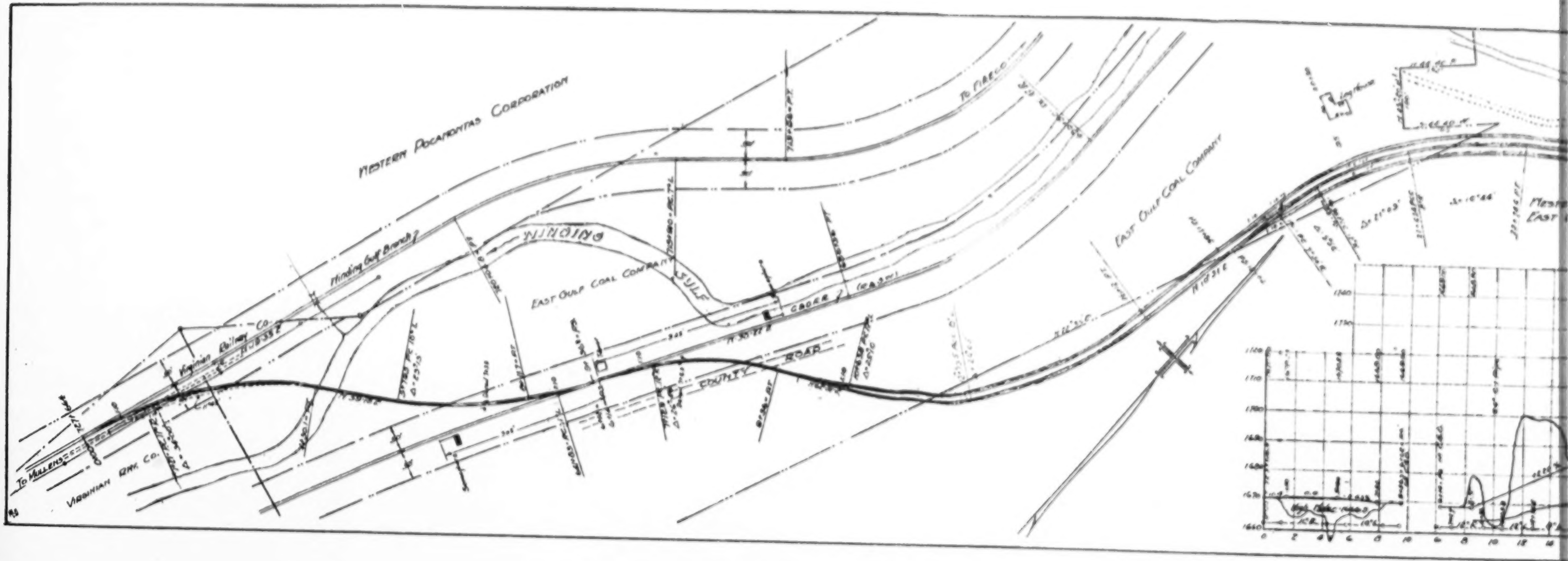
GCM-P.

[fol. 1426]

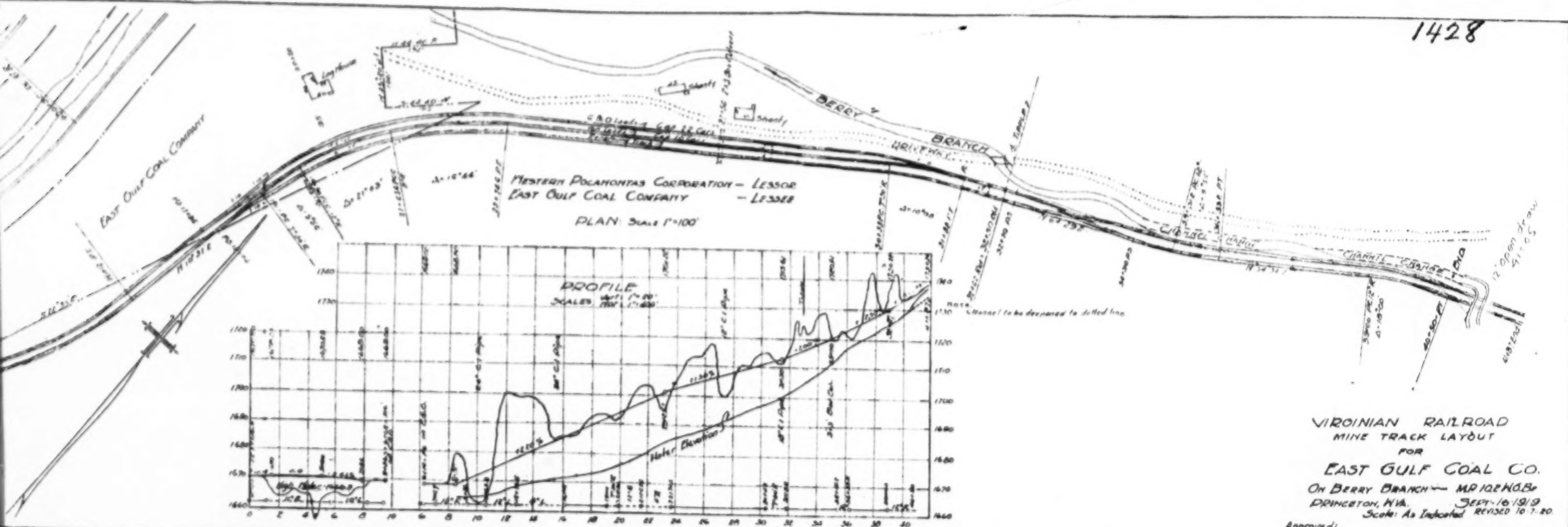
November 23d, 1920.

Mr. P. C. Thomas, Assistant General Manager East Gulf
Coal Company, Helen, W. Va.

DEAR SIR: In accordance with your letter of the 15th instant in reply to mine of the 5th instant, I am attaching to the contract dated May 17, 1919, between the East Gulf Coal Company, Inc., and the Virginian Railway Company, as a part thereof, blueprint dated September 16, 1919, revised October 7th, 1920, file No. A-1571, which has been approved by you, to take the place of blueprint dated March 24th, 1919, showing the location of mine track con-



1428



VIRGINIAN RAILROAD
MINE TRACK LAYOUT
FOR
EAST GULF COAL CO.
ON BERRY BRANCH - MARIETTA, VA.
PRINCETON, VA. SEPT 16/1919
Scale: As Indicated. Revised 10-7-20.
Approved: _____
Acting Chief Engineer.

structed under said agreement at Station 723, M. P. 10.3, Winding Gulf Branch.

You will please attach the enclosed copy of revised blueprint to said contract, advising me when you have done so.

Yours truly, (S.) A. M. Traugott, Assistant Chief Engineer.

GCM-P.

[fol.1427]

East Gulf Coal Company

Helen, W. Va., November 15, 1920.

Mr. A. M. Traugott, Assistant Chief Engineer.

DEAR SIR: I enclose herewith two blueprints of your plan A-1571 showing mine track layout for the East Gulf Coal Company at Helen.

These plans have been approved as requested. Kindly send us one print for our use in putting the track in.

Yours truly, East Gulf Coal Company. (Sd.) P. C. Thomas, Assistant General Manager.

Copy.

(Here follows map, side folio page 1428)

[fol.1429] Whereas, The President of the United States, by a proclamation made on the 26th day of December, 1917, through Newton D. Baker, Secretary of War, took possession of various systems of transportation by railroad in the United States, including the railroad owned and operated by the Virginian Railway Company, a corporation created and existing under the laws of the State of Virginia, hereinafter designated "Virginian Railroad;" and,

Whereas, By an act of Congress approved March 21st, 1918, entitled "An Act to Provide for the Operation of Transportation Systems While Under Federal Control, for the Just Compensation of their Owners, and for Other Purposes," the President was given authority as therein appears; and,

Whereas, The President has appointed W. D. Hines as Director General of Railroads, with authority to do, or re-

quire to be done, all such things as are necessary or proper in the operation of the said railroads; and,

Whereas, C. H. Hix, has been appointed Federal Manager of the line of railroad formerly operated by the said The Virginian Railway Company; and,

Whereas, East Gulf Coal Company, a corporation of the State of West Virginia, has made application for the construction of a track from its operation on Berry Branch, State of West Virginia, to the Sta. 723, 10.3, Winding Gulf Branch of the Virginian Railroad at the location as shown in yellow on the blue print attached hereto and made a part hereof, and hereinafter referred to as "track"; and,

Whereas, In the construction and maintenance of said track it is necessary that certain requirements of General Order No. 15, issued by the Director General of Railroads, March 26th, 1918, be observed:

Now, Therefore, The United States Railroad Administration, W. D. Hines, Director General of Railroads, acting by and through C. H. Hix, Federal Manager of the Virginian Railroad, and hereinafter designated as "Manager," party of the first part, and East Gulf Coal Company, party of the second part, do mutually covenant and agree with each other as follows:

1. The party of the second part shall, at its own expense, provide the necessary land outside of the right of way of the Virginian Railroad, do all the grading, provide all drains, and bridging, and furnish all ties and timber necessary for the construction of said track beyond clearance point at the site of the work; thereupon the Manager shall, at the cost of the Coal Company as hereinafter provided, furnish the necessary rails and fastenings, frogs and switches, and ballast and shall lay and surface the track and operate it; all work and material to be subject to the approval of the Manager.

2. The party of the first part shall pay for, own and maintain that part of the track upon its right of way from switch point to clearance point, a distance of 165 feet.

3. The party of the second part shall pay for, own and maintain that part of the track beyond the right of way line of the Virginian Railroad.

4. The party of the second part shall pay for, and maintain, and the party of the first part shall own, that part of the track on the right of way from the clearance point to the right of way line of the Virginian Railroad.

5. If the party of the second part fails to maintain in reasonably safe condition the part of the track which it is required to maintain under this agreement, the party of the first part may disconnect the track or refuse to operate it when not in such condition.

6. If the party of the second part shall not, in the opinion of the party of the first part, furnish sufficient business to justify maintaining said track, the party of the first part may, if he so elects, discontinue the operation of the said track.

7. Upon the completion of the said track the party of the second part shall pay to the party of the first part the entire cost of constructing that part of said track, which is to be borne by the party of the second part as provided for hereunder.

8. The party of the second part also agrees to reimburse the party of the first part for changes made and work done on its telegraph and telephone line on account of the construction of said track, at actual cost, plus ten per cent.

9. Nothing herein contained shall be construed as requiring the party of the first part to maintain and operate the said track wholly for the business of the party of the second part, it being understood that the said track, and any extension, sidings or spurs which shall be built in connection therewith may be used for such business as the party of the first part shall desire, provided such use shall not unreasonably interfere with the operation of, and shall not be to the detriment of the party of the second part.

10. Party of the second part shall conduct its mining operations in such manner as will not damage the railway of the Virginian Railroad, or interfere with its operations, whether such railway be upon lands covered by this agreement or upon other lands; and sufficient supports shall be left under the railway to secure support of the railway constructed thereon.

11. The party of the first part shall have the right to make surveys of the mines of the party of the second part under the railway or right of way of the railway, in order to determine the condition of such right of way, and for this purpose shall also have access to the mine maps of the party of the second part at all times.

12. The party of the second part shall indemnify and save harmless the party of the first part and/or The Virginian Railway Company, as their respective interests may appear, against any and all damages and claims for damages on account of any loss or damage which he or his successors shall suffer by reason of any fire set by the locomotives or cars of the party of the first part to any buildings now or hereafter erected, or to the contents thereof, or to property of any kind stored or placed upon or along the said track; whether such buildings, or the contents thereof, or such property, shall belong to the party of the second part, or Virginian Railroad, or to a third person.

And the party of the second part shall indemnify and save harmless the party of the first part and/or The Virginian Railway Company, as their respective interests may appear, against loss or damage to the property of the Virginian Railroad, or property in the custody of the party of the first part; and against all loss on account of personal injuries or loss of life which shall be caused by the acts or omissions of the party of the second part, its agents or employees.

13. The party of the first part shall not be liable as a common carrier, or as bailee, for any property loaded into any car on said track until said car is attached to the engine or train of the party of the first part, to be moved by said train towards its destination; or until a bill of lading shall have been issued to the party of the second part, or its assigns, or the shipper; and until said car is so attached or coupled up, or until said bill of lading is issued, the said car and its contents shall be deemed to be in the possession of the party of the second part, in so far as liability for the safety and care thereof is concerned; and the party of the second part agrees to protect and save harmless the said party of the first part and/or The Virginian Railway Company, as their respective interests may appear, from

all loss or damage by reason of any damage or injury to said car, and/or its contents, while the same is in possession of the party of the second part as aforesaid.

[fol.1430] 14. The party of the second part agrees that all shipments consigned to it for delivery upon said track, shall be deemed to be fully delivered as soon as the car containing such shipment shall have been placed on said track, and detached from the engine or train by which it was moved; and the party of the first part shall thereupon be fully relieved of any liability for the contents of such car, whether as a common carrier or bailee.

15. The party of the second part agrees that it will keep the right of way along said track free of all combustible materials and rubbish, and will indemnify the party of the first part and/or The Virginian Railway Company, as their respective interests may appear, against any and all loss or liability which the party of the first part and/or The Virginian Railway Company, may sustain, or incur, in any manner whatever, by reason of claims, suits or judgments, accruing on account of loss or damage by fire communicated by locomotives, engines or trains operated over said track, whether to the party of the second part or any other person or persons.

16. The party of the second part agrees that no building, structure or commodity, shall be constructed, maintained or stored within 5 feet from the outside edge of the nearest rail of said track; and that it will keep the right of way for said track free of all commodities, rubbish, trash, or other objects, which may prove a danger to those engaged in the operation of the said railroad; and will indemnify the party of the first part, and/or The Virginian Railway Company, as their respective interests may appear, from all claims and demands which may be made against him, by reason of any loss, damage or injury growing out of, or caused by the failure of the party of the second part to keep the right of way for said track free from obstructions and objects as aforesaid being a menace to those operating said railroad.

17. This agreement shall continue in force during the continuance of Federal Control over the properties of the

Virginian Railroad, unless sooner terminated by either party giving to the other sixty (60) days' notice in writing of its intention so to do.

Upon the termination of the Federal Control over the Virginian Railroad properties, this contract shall inure to the benefit of The Virginian Railway Company, or its successors or assigns, including the right to terminate this agreement.

In witness whereof the United States Railroad Administration, W. D. Hines, Director General of Railroads, Virginian Railroad, has caused these presents to be executed by C. H. Hix, Federal Manager; and the said party of the second part has caused the same to be executed by P. M. Snyder its President, this 17th day of May, 1919.

United States Railroad Administration. W. D. Hines, Director General of Railroads, by C. H. Hix, Federal Manager, Virginian Railroad.
(Seal.) East Gulf Coal Company, by P. M. Snyder, President. (Seal.) Attest: L. S. Tully, Secretary.

STATE OF —, —,
County of —, To wit:

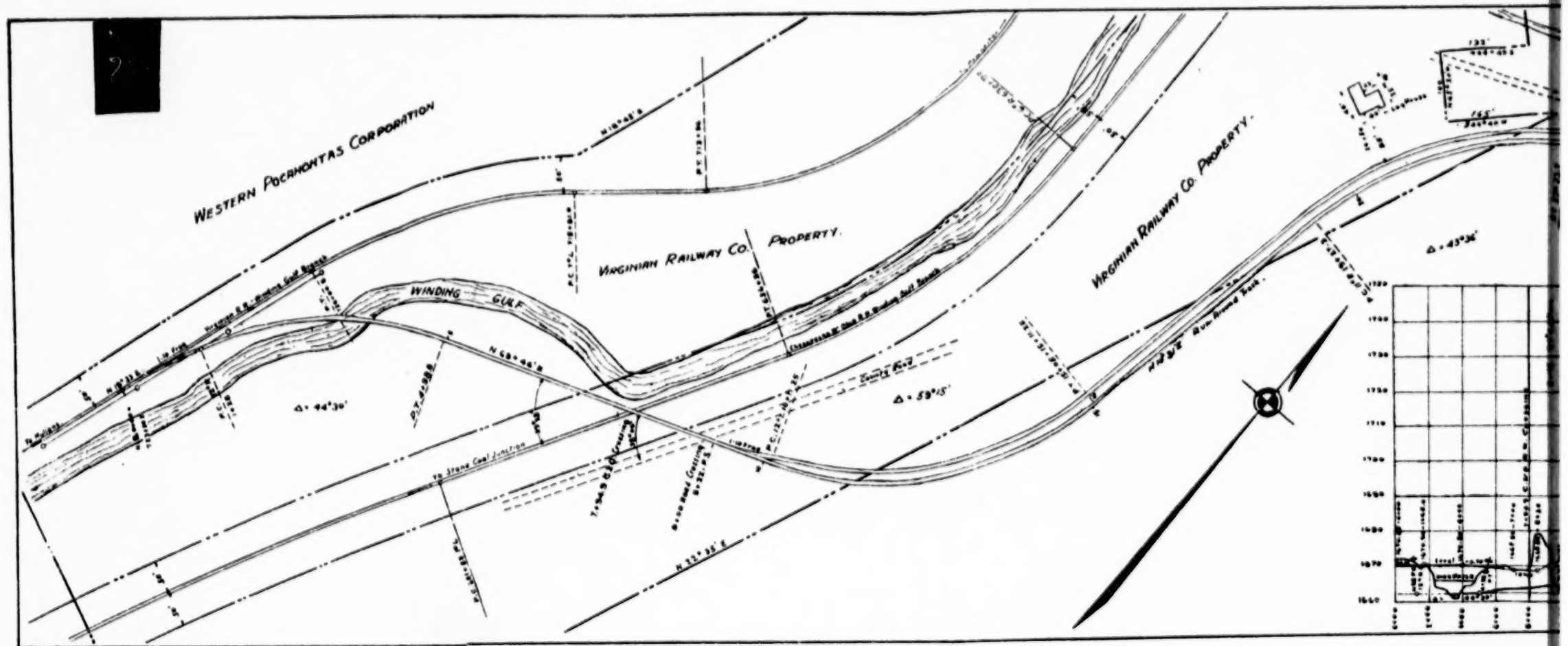
I, —, —, a Notary Public in and for the — of —, in the State of —, do certify that —, —, Director General of Railroads, whose name by —, — as Federal Manager, is signed to the writing above, bearing date on the — day of —, 19—, has this day acknowledged the same before me in my — aforesaid, by the said —.

Given under my hand and official seal this — day of —, 19—.

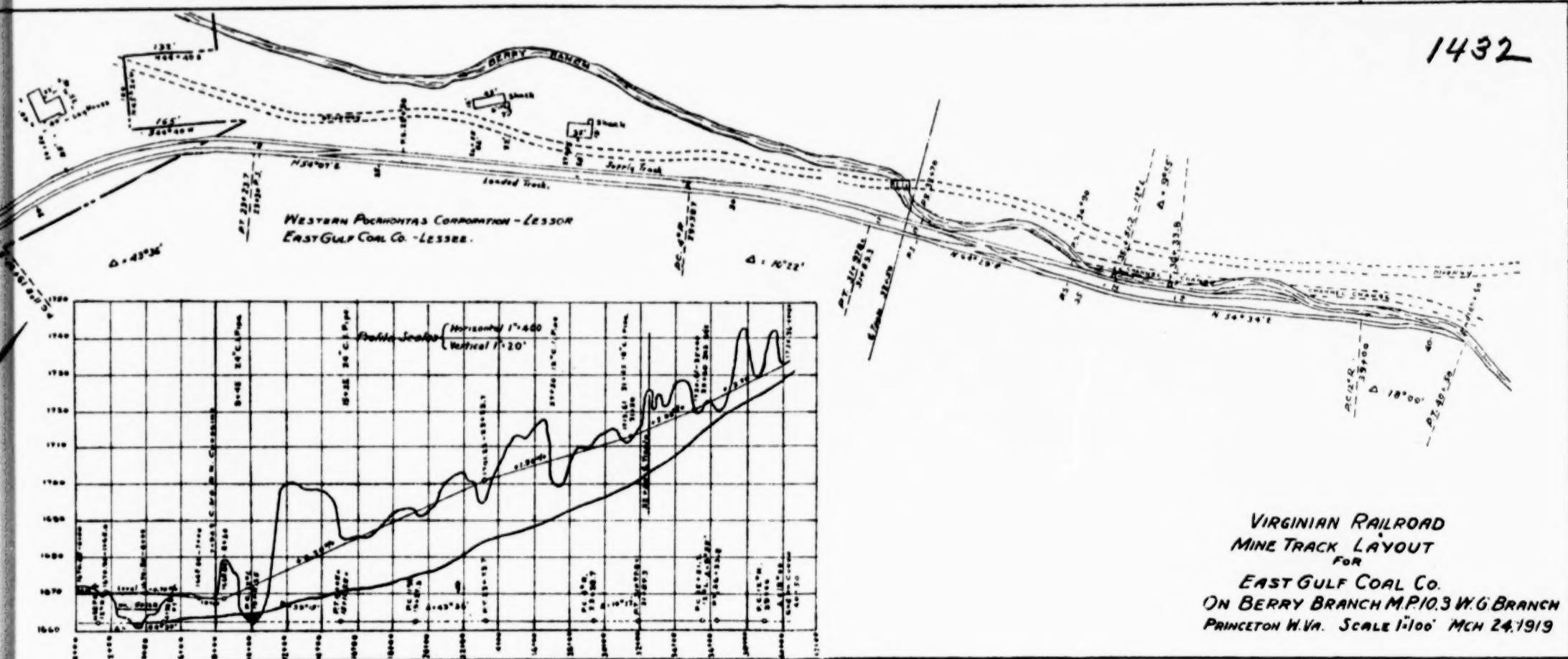
—, —, Notary Public. My commission expires on the — day of —, 19—.

[fol. 1431] STATE OF WEST VA.,
County of Fayette, To-wit:

I, A. D. Robinson, a Notary Public, commissioned, qualified and acting in and for the State and County aforesaid, do hereby certify that on this day personally appeared before me, in my said County, P. M. Snyder, to me personally



1432



A-1571



known and known to me to be the President of East Gulf Coal Company, one of the corporations described in, and the name of which is subscribed to, and which executed the foregoing instrument or the writing hereto annexed, bearing date the 17th day of May, 1919, and personally known to me to be the same person whose name is subscribed to said writing as such President, and being by me duly sworn, he did depose and say: that he resides in Mt. Hope, State of West Va.; that he is the President of East Gulf Coal Company, one of the corporations described in and which executed the foregoing instrument of the writing hereto annexed; that he is authorized by said corporation to execute and acknowledge deeds and other writings of said corporation; that he knows the corporate seal of said corporation, and that one of the seals affixed to the said instrument or writing is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed the same by like order; and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given; and the said P. M. Snyder acknowledged the said writing to be the act and deed of said corporation; and to be his act and deed, for the uses and purposes therein set forth.

Given under my hand and official seal this 17th day of May, 1919.

A. D. Robinson, Notary Public. My commission expires on the 20th day of October, 1926.

STATE OF —, — of —, To wit:

I, —, a Notary of the said —, do certify that — whose name is/are signed to the writing above bearing date on the day of —, 19—, has/have this day acknowledged the same before me in my said —.

Given under my hand and official seal this — day of —, 19—.

— —, Notary Public. My Commission expires on the — day of —, 19—.

(Here follows map, side folio page 1432)

Agreement Between the Chesapeake & Ohio Ry. Co., the
Virginian Ry. Co., and the East Gulf Coal Company,
November 29, 1919

This agreement, made this 29th day of November, 1919, between The Chesapeake & Ohio Railway Company, a corporation, hereinafter called the "Chesapeake Company," party of the first part, The Virginian Railway Company, a corporation, hereinafter called the "Virginian Company," party of the second part, and the East Gulf Coal Company, a corporation, hereinafter called the "Coal Company," party of the third part.

Whereas, a spur track is to be built from the railway of the Virginian Company, at M. P. 10.2 on the Winding Gulf Branch of the Virginian Company, to reach the mine of the Coal Company on Berry Branch in Raleigh County, W. Va., which spur track will cross at grade the Railway of the Chesapeake Company, as shown on the map hereto attached and made a part hereof; and,

Whereas, the Virginian Company will operate cars and locomotives over said spur track and over said crossing of said spur track with said railway of the Chesapeake Company; and,

Whereas, it is desired to set forth the respective rights and liabilities of the parties hereto in respect to the construction, operation and maintenance of the said crossing:

Now, therefore, for the mutual advantage of the parties hereto it is agreed as follows:

1. The Coal Company shall have the right to construct at grade its spur track which shall cross at grade the Railway of the Chesapeake Company as shown on the map hereto attached. The expense of the construction, maintenance, repairs and renewals of the said grade crossing to be borne by the Coal Company; it being understood that all the work involved in the construction, maintenance, repairs and renewals of the said grade crossing shall be subject to the approval of the Chesapeake Company, and shall be performed so as to interfere as little as practicable with the movement of the trains of the Chesapeake Company. The Chesapeake Company and the Coal Company

hereby gives to the Virginian Company the right to operate its cars and locomotives over said spur track and over said crossing.

2. The Coal Company covenants that it will, when re-[fol. 1434] quested by the Chesapeake Company, or by the Virginian Company, or when required by the public authority, install at said crossing an interlocking cabin and necessary interlocking apparatus and signals; said interlocking cabin, apparatus and signals to be built in accordance with plans to be approved by the Chief Engineer of the Chesapeake Company as shown on blueprint attached hereto and made a part hereof, and marked for identification: "C. & O. R. R. Sketch showing suggested arrangement of signals and derails at connection between Virginian & C. & O. R. R. serving East Gulf Nos. 3 & 4 Mines. No Scale. October 30, 1919."

3. The cost of constructing the crossing and the cost of installing the interlocking cabin, and necessary interlocking apparatus and signals, when the same shall be built, shall be borne by the Coal Company; and the cost of operation, maintenance, repairs and renewals of said crossing, and said interlocking cabin, necessary interlocking apparatus, and signals, when installed, shall also be borne by the Coal Company.

4. The normal position of the interlocking signals is to be clear to the main line of the Chesapeake Company, and when in such position the trains of the Chesapeake Company may proceed.

5. When a train using the track of the Virginian Company wants to pass over the crossing, its trainmen will have to enter the interlocking cabin and change the signals and derails so that the movement can be made, and when the locomotive and cars of said train have passed over the crossing said trainmen are to restore the signals and derails to their normal position, which is to clear to the Chesapeake Company's trains.

6. The trains of the Chesapeake Company shall at all times have preference in the use of said grade crossing over the trains of a similar or inferior class of the Virginian Company; but superior trains of either party shall have

preference over trains of an inferior class of the other party.

7. The Chesapeake Company and the Virginian Company shall respectively be liable for any and assume all damage [fol. 1435] to, or loss or destruction of property, personal injury or loss of life, which may be caused by their respective locomotives or cars, through the acts or omissions of their respective men or joint employees; but in the event of any damage to, or loss or destruction of property, personal injury or loss of life, caused by the joint acts or omissions of the agents or employees of the said Chesapeake Company and the said Virginian Company, then each of said Companies shall sustain without indemnity all damage to or loss or destruction of its own property, and shall be liable for all property in its respective custody; and for all personal injury or loss of life to its employees, or to persons upon its respective locomotives or cars; and if there shall be any damage to, or loss or destruction of property of any third person, or any personal injury or loss of life to any third party, or to a joint employee of the said last mentioned Companies, then each of said last mentioned Companies hereto shall bear one half of the amount required to be paid in settlement of all claims of the said third-party or joint employee; and if either of said last mentioned Companies should be compelled to pay any judgments, costs or expenses, the whole or any part of which by the terms hereof should be borne by the other party hereto, then the party so liable shall promptly reimburse the party making the payment for the amount so paid.

8. The Coal Company shall indemnify and save harmless the Chesapeake Company, and/or the Virginian Company, as their interests may appear, against loss or damage to their respective properties, or to property in their respective custody; and against all loss on account of personal injuries or loss of life, which shall be caused by the acts or omissions of the Coal Company, its agents or employees.

9. Any disagreements arising hereunder shall be submitted to five arbitrators, one of whom shall be chosen by the Chesapeake Company, one by the Virginian Company, one by the Coal Company, and the other two by the three

so chosen, and the decision of such arbitrators, or any four of them, shall be final and binding upon the parties hereto. [fol. 1436] In testimony whereof The Chesapeake & Ohio Railway Company, The Virginian Railway Company and the East Gulf Coal Company have caused these presents to be signed by their respective Presidents, and their respective corporate seals to be hereto affixed and attached by their duly authorized officers, on the day and year first above written.

The Chesapeake & Ohio Railway Company, by (S.) Geo. W. Stevens, President. Attest: (S.) A. Trevett, Secretary. The Virginian Railway Company, by (S.) C. W. Huntington, President. Attest: (S.) Jas. Clarke, Secretary. East Gulf Coal Company, by (S.) P. M. Snyder, President. Attest: (S.) L. S. Tully.

The consent of the Director General of Railroads is hereby given to the execution and delivery of this instrument.

Walker D. Hines, Director General of Railroads, by (S.) C. H. Hix, Federal Manager, Virginian Railroad.

The consent of the Director General of Railroads is hereby given to the execution and delivery of this instrument.

Walker D. Hines, Director General of Railroads, by (S.) Geo. W. Stevens, Federal Manager Chesapeake & Ohio Railway Company.

[fol. 1437] STATE OF VIRGINIA,
City of Richmond, To wit:

I, A. H. Lane, a Notary Public of said State and City, hereby certify that George W. Stevens, Federal Manager, Chesapeake & Ohio Railroad, whose name is signed to the writing above bearing date on the 29th day of November, 1919, has this day acknowledged the same before me in my said City.

Given under my hand and official seal this 5th day of February, 1920.

My commission expires April 21, 1922.

(S.) A. H. Lane, Notary Public.

STATE OF NEW YORK,

County of New York, To Wit:

I, Henry F. Lohmeyer, a Notary Public of said County do certify that Geo. W. Stevens personally appeared before me in my said County and being by me duly sworn did depose and say that he is the President of The Chesapeake & Ohio Railway Company, one of the corporations described in the writing above, bearing date on the 29th day of November, 1919, authorized by said corporation to execute and acknowledge deeds and other writings of said Corporation, and that the seal affixed to said writing is the corporate seal of the said Corporation, and that said writing was signed and sealed by him in behalf of said Corporation by its authority duly given. And the said Geo. W. Stevens acknowledged the said writing to be the act and deed of said Corporation.

Given under my hand and official seal this 18th day of March, 1920.

My commission expires March 30, 1921.

(S.) Henry F. Lohmeyer, Notary Public.

[fol. 1438] STATE OF NEW YORK,

County of New York, To wit:

I, Mary Van Horn, a Notary Public of said County, do certify that C. H. Hix, Federal Manager, Virginian Railroad, whose name is signed to the writing above bearing date on the 29th day of November, 1919, has this day acknowledged the same before me in my said County.

Given under my hand and official seal this 8th day of March, 1920.

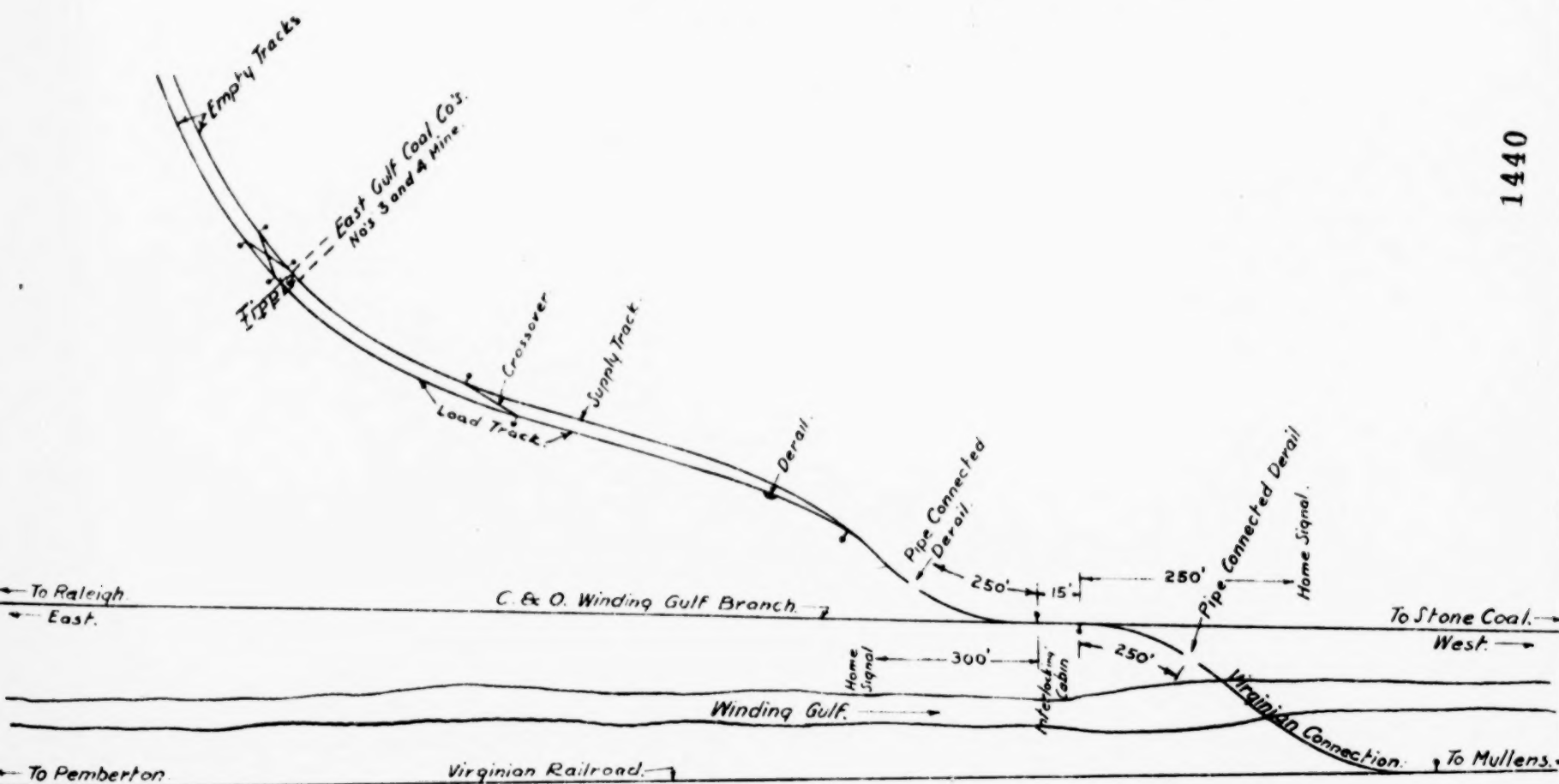
My commission expires March 30, 1920.

(S.) Mary Van Horn, Notary Public.

STATE OF NEW YORK,

County of New York, To wit:

I, Mary Van Horn, a Notary Public of the said County of New York do certify that C. W. Huntington personally appeared before me in my said County and being by me duly sworn did depose and say that he is the President of The Virginian Railway Company, one of Corporations de-



C. & O. R. R.
 Sketch Showing Suggested Arrangement
 Of Signals and Derails
 at Connection Between Virginian and
 C. & O. R. R. Serving East Gulf No's 3 & 4 Mines.
 No Scale. October 30, 1919

scribed in the writing above bearing date the 29th day of November, 1919, authorized by said Corporation to execute and acknowledge deeds and other writings of said Corporation, and that the seal affixed to said writing is the corporate seal of the said Corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said C. W. Huntington acknowledged the said writing to be the act and deed of said Corporation.

Given under my hand and official seal this 18th day of March, 1920.

My Commission expires March 30, 1920.

(S.) Mary Van Horn, Notary Public.*

[fol. 1439] STATE OF WEST VIRGINIA,

County of Fayette, To wit:

I, Willis F. Triplett, a Notary Public of the said County of Fayette do certify that P. M. Snyder personally appeared before me in my said County and being by me duly sworn did depose and say that he is the President of the East Gulf Coal Company, one of the Corporations described in the writing above bearing date the 29th day of November, 1919, authorized by said Corporation to execute and acknowledge deeds and other writings of said Corporation, and that the seal affixed to said writing is the corporate seal of the said Corporation, and that said writing was signed and sealed by him in behalf of said Corporation by its authority duly given. And the said P. M. Snyder acknowledged the said writing to be the act and deed of said Corporation.

Given under my hand and official seal this the 6th day of February, 1920.

(S.) Willis F. Triplett, Notary Public. My commission expires Feb. 8, 1927.

(Here follows map, side folio page 1440.)

Docket No. 13832

Witness: Williamson

In the Supplemental report of the Commission in the Five Per Cent Case, 32 I. C. C. 325 (December 16, 1914) the Commission stated its conclusion at page 331, in part, as follows:

"For various reasons we shall except from the proposed increase the following rates:

“2. Rates on bituminous coal and coke. Not long since these rates were investigated and maximum rates were prescribed by the Commission. The key rates upon bituminous coal—the rate from the Pittsburgh district to Youngstown, and the rate on lake cargo coal to Ashtabula—have been fixed in the light of the various factors which entered into the transportation of such coal. The prevailing rates are remunerative, and the financial condition of the principal bituminous coal carriers is in marked contrast with that of many of the other carriers in official classification territory. Twice in the not distant past the rates on bituminous coal have been increased 5 cents a ton, and would seem now to be as high as may fairly be allowed.”

In the Five Per Cent Case, 31 I. C. C. 351 (July 29, 1914) the Commission stated its conclusion at page 443, in part, as follows:

“In what has preceded we have found, treating as one road the 35 railway systems in official classification territory that have asked for this so-called 5 per cent increase in rates, that their net operating income is insufficient and should be increased. There remains for consideration the question whether the proposed increased in rates should be approved.

"We have seen that the class rates in central freight association territory are on a lower scale than can be found elsewhere in the country, and that many of the commodity [fol. 1442] rates are too low and are probably unremunera-

tive, considering the diversified nature of the traffic. The class rates and many of the commodity rates may therefore with propriety be increased. This approval, however, is subject to the following limitations:

“(a) With respect to certain heavy commodities, namely, brick, tile, clay, coal, coke starch, cement, iron ore, and plaster, protestants made such a showing as to constrain us to hold that the carriers have failed to sustain their burden under the statute.”

EXHIBIT No. 58

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 13832

GULF COAL COMPANY

vs.

THE VIRGINIAN RAILWAY COMPANY, and Others

Statement

Complying with my promise to have the Virginian Railway Company files searched for an agreement giving the Chesapeake and Ohio Railway Company access to the No. 5 or “Simrall” Mine of the East Gulf Company, and to file such agreement, if found, with an accompanying statement, if deemed necessary. I find there is no formal agreement in the premises, but there is an agreement, evidenced by correspondence between officers of the two Railway Companies, “that the Virginian Railway Company will give the Chesapeake and Ohio Railway Company the right to cross to the Simrall Mine of the East Gulf Coal Company, the crossing to be at the expense of The Chesapeake and Ohio Railway Company and under the usual and proper restrictions and safeguards,” this agreement was made in April, 1920, in part consideration for rights of way for the Virginian & Western (formerly Virginian-Wyoming) Railway Company, a Virginian subsidiary, through lands of the [fol. 1443] Western Pocahontas Corporation, a Chesapeake

and Ohio subsidiary, and it is expected to be followed by a formal agreement if and when the Chesapeake and Ohio Railway Company desires it.

—, General Counsel the Virginian Railway Company.

EXHIBIT No. 59

Statement Showing All Cars Received from and Delivered to the C. & O. Railway at Deepwater, West Va., for the Period Jan., 1921, to October, 1922, Incl.

	1921			1922	
	De- livered	Re- ceived		De- livered	Re- ceived
January	757	776	January	729	815
February	743	1,001	February	753	853
March	719	866	March	806	951
April	645	719	April	844	1,052
May	653	732	May	1,073	1,159
June	621	665	June	871	1,172
July	686	698	July	768	915
August	706	807	August	598	958
September	753	713	September	465	668
October	712	956	October	727	1,129
November	948	991			
December	1,019	919			
			Total first ten months 1922.	7,535	9,672
Total for 1921.	8,962	9,843	Grand total....	16,497	19,515
			Avg. per mo....	749.6	887.0

C. E. Reynolds, Car Accountant.

Norfolk, Va., November 16th, 1922.

[fol. 1444]

EXHIBIT No. 60

The Virginian Railway Company

Exhibit 60, Filed with Testimony of A. M. Traugott, Showing Increased Expense of Adhering to Ruling Grade of Two-tenths of One per Cent in Constructing the Virginian Railway

Extraordinary expense was incurred in the construction of the Virginian Railway between Princeton, W. Va., and

Sewalls Point, Virginia in adhering to its ruling grade of two-tenths of one per cent operating grade, East Bound and to obtain light curvature and good alignment in order to enable the Railway Company to handle heavy tonnage trains East Bound at the following points:

From Suffolk M. P. 24 to Meherrin M. P. 132:

Between these points revisions of the located line were made, adhering to the ruling grade of two-tenths of one per cent, upon which the final construction was finished. By these revisions the line was shortened three (3) miles, curvature reduced by five hundred (500) degrees and the maximum operating grade shortened three and one-half miles. The revised line involved an estimated increase in costs of \$150,000.00 between these points over the estimated expenditure on the original route.

From Meherrin M. P. 132 to Brookneal M. P. 170:

Between these points revisions of the located line were made, adhering to the ruling grade of two-tenths of one per cent, upon which the final construction was finished. By these revisions the line was shortened four (4) miles and curvature reduced by seven hundred (700) degrees. The revised line involved an estimated increase in cost of \$300,000.00 between these points over the estimated expenditure on the original route.

[fol. 1445] From Leesville M. P. 205 to Roanoke M. P. 243:

Between these points what was known during construction as the Goose Creek Cut-off was made on a revised location to shorten the distance as compared with the original location following the Staunton River, the distance saved being 22 miles, viz, 38 miles by the cut-off as compared with 60 miles by the River. Curvature was reduced by 4,156 degrees. Very heavy construction was involved, and adherence to the ruling grade of two-tenths of one per cent involved an estimated increase in cost of \$930,000, between these points over the estimated expenditure on the original route by the River.

From Fagg M. P. 270 to Shelby M. P. 279:

Between these points revisions of the located line were made upon which the final construction was finished. Very heavy construction was involved by the building of a tunnel one mile long. By these revisions the line was shortened 2.66 miles, curvature reduced by 1,137 degrees and the maximum Helper operating grade shortened by 4.1 miles. The revised line involved an estimated increase in cost of \$100,000 between these points over the estimated expenditure on the original route.

From Kelleysville M. P. 328 to Princeton M. P. 340:

Between these points revisions of the located line were made upon which the final construction was finished. By these revisions the line was shortened 2.54 miles, curvature was reduced by 1,096 degrees and the maximum operating grade shortened by 0.9 miles. The revised line involved an estimated increase in cost of \$260,000.00 between these points over the estimated expenditure on the original route.

At various other points in the 347 miles between Princeton and Sewalls Point minor increases in construction cost resulted from adherence to the ruling grade, amounting in the judgment of the Chief Engineer and myself to an aggregate of \$1,410,000, as compared with various maximum grades, none exceeding six-tenths of one per cent which would have been possible at these points.

[fol. 1446] The above as set out represents revisions made to the original route as located on a two-tenths of one per cent ruling grade. In addition to the above it is believed that if a heavier grade not exceeding six-tenths of one per cent was used at various places, construction expense could have been decreased about \$2,000,000.

The aggregate of the several amounts hereinabove set forth is \$5,170,000, and is intended and believed to be a conservative estimate of the increased cost of construction of the 347 miles of the Virginian Railway between Princeton and Tidewater resulting from adherence to the ruling grade against eastbound traffic of two-tenths of one per cent. This is necessarily an estimate since in most cases the necessary work to determine the precise cost of locations cheaper to build but more expensive to operate was not done, but this estimate has been made after a careful

review of the data in the files of the Railway Company and is believed and intended to be as accurate as practicable and conservative.

— — —, Assistant Chief Engineer.

AMT:J.

[fol. 1447]

EXHIBIT IN EVIDENCE

Statement Showing Average Delay Virginian Coal Cars from Mines to Jarratt, Jarratt to Mines, Delay off Line, and Average Delay from Mines to Jarratt and Return, Including Time off Line.

July to December, 1920:

		Days
Avg. Delay	Mines to Jarratt	4 2
" "	Jarratt to Mines	4 0
" "	Off Line	13 3
" "	Mines to Jarratt and return (Including time Off Line)	21 5

January to December, 1921:

Avg. Delay	Mines to Jarratt	5 8
" "	Jarratt to Mines	5 6
" "	Off Line	11 3
" "	Mines to Jarratt and return (Including time Off Line)	22 7

January to June, 1922:

Avg. Delay	Mines to Jarratt	5 1
" "	Jarratt to Mines	5 0
" "	Off Line	10 4
" "	Mines to Jarratt and return (Including time Off Line)	20 5

July, 1920, to June, 1922:

Avg. Delay	Mines to Jarratt	5 2
" "	Jarratt to Mines	5 1
" "	Off Line	11 6
" "	Mines to Jarratt and return (Including time Off Line)	21 9

C. E. Reynolds, Car Accountant.

Norfolk, Va., November 9th, 1922.

[fol. 1448]

EXHIBIT IN EVIDENCE

Statement Showing Average Delay Virginian Coal Cars from Mines to Altavista, Altavista to Mines, Delay Off Line, and Average Delay from Mines to Altavista and Return, Including Time Delayed Off Line.

July, 1920, to December, 1920:

	Days
Avg. Delay Mines to Altavista.....	5 0
“ “ Altavista to Mines.....	3 8
“ “ Off Line.....	10 0
“ “ Mines to Altavista and Return (Including time off Line).....	18 8

January, 1921, to December, 1921:

Avg. Delay Mines to Altavista.....	4 7
“ “ Altavista to Mines.....	4 5
“ “ Off Line.....	9 5
“ “ Mines to Altavista and Return (Including time off Line).....	18 6

January, 1922, to June, 1922:

Avg. Delay Mines to Altavista.....	3 7
“ “ Altavista to Mines.....	4 9
“ “ Off Line.....	9 5
“ “ Mines to Altavista and Return (Including time off Line).....	18 1

July, 1920, to June, 1922:

Avg. Delay Mines to Altavista.....	4 5
“ “ Altavista to Mines.....	4 4
“ “ Off Line.....	9 6
“ “ Mines to Altavista and Return (Including time off Line).....	18 5

C. E. Reynolds, Car Accountant.

Norfolk, Va., November 9, 1922.

[fol. 1449]

EXHIBIT IN EVIDENCE

Statement Showing Average Delay Virginian Coal Cars
from Mines to Alberta, Alberta to Mines, Delay Off Line,
and Average Delay from Mines to Alberta and Return,
Including Time Delayed Off Line.

July, 1920, to December, 1920:

	Days
Avg. Delay Mines to Alberta.....	4 9
" " Alberta to Mines.....	4 1
" " Off Line.....	23 6
" " Mines to Alberta and return (In- cluding time off line).....	32 6

January to December, 1921:

Avg. Delay Mines to Alberta.....	5 6
" " Off Line.....	12 4
" " Mines to Alberta and return (In- cluding time off line).....	22 9

January to June, 1922:

Avg. Delay Mines to Alberta.....	4 8
" " Alberta to Mines.....	5 3
" " Off Line.....	14 0
" " Mines to Alberta and return (In- cluding time off line).....	24 1

July, 1920, to June, 1922:

Avg. Delay Mines to Alberta.....	5 2
" " Alberta to Mines.....	4 8
" " Off Line.....	15 6
" " Mines to Alberta and return (In- cluding time off line).....	25 6

C. E. Reynolds, Car Accountant.

Norfolk, Va., November 9th, 1922.

[fol. 1450]

EXHIBIT IN EVIDENCE

Statement of New River Tonnage Handled by Mitchell & Dillon Coal Company in Chicago Market Between April 1st, 1921, and October 31st, 1922.

1921.

April	140 cars.	7,000 tons.
May	168 "	8,400 "
June	115 "	5,750 "
July	75 "	3,750 "
August	142 "	7,100 "
September	170 "	8,500 "
October	240 "	12,000 "
November	225 "	11,250 "
December	113 "	5,650 "

1922.

January	219 "	10,950 "
February	250 "	12,500 "
March	227 "	11,350 "
Total	2,084 "	104,200 "

1922.

April	242 "	12,100 "
May	313 "	15,650 "
June	180 "	9,000 "
July	92 "	4,600 "
August	85 "	4,250 "
September	114 "	5,700 "
October	114 "	5,700 "
Total	1,140 "	57,000 "

[fol. 1451]

EXHIBIT IN EVIDENCE

Chesapeake & Ohio Railway Coal Loadings (Net Tons)
from Mine of Gulf Smokeless Coal Company, at Tams,
W. Va.

1921.	Tidewater	Inland east	Inland west
January		5,860	1,500
February	660	3,730	2,250
March		9,330	2,540
April		12,070	6,830
May	7,290	8,880	7,520
June	8,140	8,330	5,180
July	4,650	2,820	1,950
August	7,710	9,170	3,940
September	2,190	9,540	4,750
October		7,240	10,260
November		7,700	8,270
December		5,960	2,360
1922.			
January		10,390	6,390
February		7,420	8,840
March	70	4,810	8,180
April		10,780	10,120
May		11,530	8,060
June	4,930	7,280	2,750
July	6,250	5,820	3,340
August	9,280	2,470	500
Total	51,170	151,130	105,530
Percentages	16.6	49.1	34.3

[fol. 1452]

EXHIBIT No. 5-A

Local Virginian Mines

Name of mine	Name of Company	Shipping Address
Virginian Smo. ..	Virginian Smo. Fuel Co.	Newlest, W. Va.
Miller Poca.	Miller Poca. Coal Co.	Corinne, " "
Wyoming	Wyoming Coal Co.	Wyco, " "
Iroquois	Iroquois Coal Min. Co.	Iroquois, " "
Devils Fork	Devils Fork Coal Co.	Devils Fork, " "
East Gulf #5	East Gulf Coal Co.	Simrall, " "

Name of mine	Name of Company	Shipping Address
Woodbay	Low Vol. Con. C. Co.....	Woodbay, " "
Big Stick	Pemberton C. & C. Co.....	Big Stick, " "
Hot Coal	Gulf Coal Co.	Hot Coal, " "
Misletoe	Lynwin Coal Co.	Misletoe, " "
Winding Gulf ...	Winding Gulf Colliery Co.....	Winding Gulf, " "
Affinity	Pemberton C. & C. Co.....	Affinity, " "
Ragland	Low Vol. Con. Coal Co.....	Pemberton, " "
Piney Creek	Piney Creek Coal Co.....	Wiley, " "
Phillips	Pemberton C. & C. Co.....	Abney, " "
Spencer Fork	Spencer Fork Coal Co.....	Bowyer, " "
Bacontown #1 ...	Wilton Smo. Coal Co.....	Bacontown, " "
Ralco	Raleigh Fire Creek C. Co.....	Ralco, " "
Douglass #2	Douglass Coal Co.	Fireco, " "
Bacontown #2 ...	Wilton Smo. Coal Co.....	Bacontown, " "
Leckie #2	Leckie Fire Creek Coal Co.....	Fireco, " "
Lillybrook #2 ...	Lillybrook Coal Co.	Fireco, " "
Amigo	Amigo Coal Co.	Amigo, " "
Bob		
Beards Fork	Loop Creek Coll. Co.....	Beards Creek, " "
Page	Loop Creek Coll. Co.....	Page, " "
Glenco	Glencoe Coal Co.....	Page, " "
Lick Fork	Lick Fork Coal Co.....	Lick Fork, " "

[fol. 1453]

Ingram Branch ..	Ingram Branch Coal Co.....	Ingram Branch, " "
Long Branch	Long Branch Coal Co.....	Long Branch, " "
Summit	Summit Coal Co.	Metalton, " "
Neal	Neal Coal Co.	Lester, " "
Slab Fork #1....	Slab Fork Coal Co.....	Slab Fork, " "
Slab Fork #5....	Slab Fork Coal Co.....	Slab Fork, " "
Glen Rogers	Raleigh-Wyoming C. Co.	Glen Rogers, " "
Otsego	Sabine Coll. Corp.	Otsego, " "
Calorie	Smith Poca, Coal Co.....	Calorie, " "
Trace Fork	Trace Fork Coal Co.....	Tracoal, " "
Mead Poca.	Mead Poca, Coal Co.....	Tralee, " "
Itmann #17	Poca, Fuel Co.....	Itmann, " "
Harty	Harty Coal Co.	Tralee, " "
Barker Creek #1..	Barkers Creek C. Co.....	Barkers Creek, " "
Alpoca	Alpoca Poca, Coal Co.....	Alpoca, " "
Koerner	Barkers Creek Coal Co.....	Barkers Creek, " "
Thermo Poca.	Thermo Poca, Coal Co.....	Bud, " "
Monticello	Monticello Smo. Coal Co.....	Montecarlo, " "
Flat Top	Flat Top Poca, Coal Co.....	Herndon, " "
Covel	Covel Smo. Coal Co.....	Covel, " "
Micajah Poca. ...	Micajah Poca, Coal Co.....	Micajah, " "
America	American Coal Co. of Allegheny Co.	America, " "
J. A. Wood.....	J. A. Wood Coal Co.....	Amigo, " "
Wacomah.		

Joint Mines (Vgn. and C. & O.)

East Gulf #3....	East Gulf Coal Co.....	Helen, W. Va.
Tams	Gulf Smokeless Coal Co.....	Tams, " "
Stotesbury	E. E. White Coal Co.....	Stotesbury, " "
MacAlpin	MacAlpin Coal Co.	MacAlpin, " "
Pemberton Fuel..	Pemberton Fuel Co.	Pemberton, " "
Lillybrook #4 ...	Lillybrook Coal Co.	Sullivan, " "
Minter	E. C. Minter Coal Co.....	Francis, " "

[fol. 1454]

Name of mine	Name of Company	Shipping Address
Rhodell	Rhodell Coal Co.	Rhodell, " "
Tommy Creek	Tommy Creek Coal Co.	Tommy Creek, " "
C. H. M. #1	C. H. Mead Coal Co.	East Gulf, " "
Killarney	Mead-Tolliver Coal Co.	Killarney, " "
Vanwood	Wood Sullivan Coal Co.	Vanwood, " "
Besoco	Beckley Poca. C. Co.	Besoco, " "
Clyde	Beckley Poca. C. Co.	Besoco, " "
Laurel	Laurel Smo. Coal Co.	Lego, " "
Lego	Fire Creek Smoke Fuel Co.	Lego, " "
Pickshin	Pickshin Coal Co.	Pickshin, " "
L. & H. #3	Lillybrook Coal Co.	Lillybrook, " "
Lillybrook #1	Lillybrook Coal Co.	Lillybrook, " "
Princewick	Princewick Coal Co.	Princewick, " "
Crab Orchard	Crab Orchard Fuel Co.	Crab Orchard, " "
Viacova	Viacova Smo. Coal Co.	Viacova, " "
Raleigh #1	Raleigh Coal & Coke Co.	Raleigh, " "
Raleigh #3	Raleigh Coal & Coke Co.	Raleigh, " "
Raleigh #6	Raleigh Coal & Coke Co.	Raleigh, " "
Mabscott	Mabscott Coal & Coke Co.	Mabscott, " "
Beckley	White Oak Coal Co.	Beckley, " "
Cranberry #1	Cranberry Fuel Co.	Cranberry, " "
Cranberry #2	Cranberry Fuel Co.	Skelton, " "
Cranberry #3	Cranberry Fuel Co.	Sprague, " "
City #2	City Coal Co.	Mabscott, " "
White Stick	White Stick Coal Co.	Beckley, " "
Lochgelly	Stuart Coll. Co.	Lochgelly, " "
Summerlee	Stuart Coll. Co.	Summerlee, " "
Oakwood	White Oak Fuel Co.	Oakwood, " "
Scarbrow	White Oak Fuel Co.	Scarbrow, " "
Whipple	White Oak Fuel Co.	Whipple, " "
Price Hill	Price Hill Coll. Co.	Prince Hill, " "
Nichol	*Nichol Coll. Co.	Glen Jean, " "
Sun	*New River Coll. Co.	Sun, " "

[fol. 1455]

Sunset	xSunset Mining Co.	Glen Jean, " "
Derryhale	xMcKell C. & C. Co.	Derryhale, " "
Dunlop	*Dunn Loop Coal & Coke Co.	Dunn Loop, " "
Catherine	xCatherine Coal Co.	Glen Jean, " "
Capece	xC. P. Calloway	Glen Jean, " "
Sugar Creek	*Sugar Creek Coal & Coke Co.	Macdonald, " "
Tamroy	xMcKell Coal & Coke Co.	Tamroy, " "
Oswald	xMcKell Coal & Coke Co.	Oswald, " "
Kilsyth	xMcKell Coal & Coke Co.	Kilsyth, " "
Lee	xLee Coal Co.	Glen Jean, " "
Packs Branch	xPacks Branch Coal Co.	Packs Branch, " "
Fayral	xFayral Coal Co.	Kilsyth, " "
Willis Branch	Willis Branch Coal Co.	Willis Branch, " "
Eccles #3	New River Coll. Co.	Eccles, " "
Eccles #5	New River Coll. Co.	Eccles, " "
Eccles #6	New River Coll. Co.	Eccles, " "
Glen White	E. E. White Coal Co.	Glen White, " "

Joint Mines (Vgn. and N. & W.)

Algonquin	Algonquin Coal Co.	Algonquin, W. Va.
-----------	--------------------	-------------------

*Track connection with both Kanawha, Glen Jean & Eastern and Chesapeake & Ohio.

x Track connection with Kanawha, Glen Jean & Eastern only.

[fols. 1456-1458] IN UNITED STATES DISTRICT COURT

Exhibit in Evidence

BEFORE INTERSTATE COMMERCE COMMISSION, WASHINGTON

SECRETARY'S CERTIFICATE

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Transcript of the stenographer's notes of the hearing held at Washington, D. C., February 5, 1923, before Examiner Hunter, and of exhibits filed at said hearing.

Petition for reopening, argument before full Commission, and postponement of effective date of order by the Virginian Railway Company filed March 28, 1925.

Reply of complainants to defendant's petition filed April 7, 1925.

Order of the Commission entered April 14, 1925.

Petition for reopening and modification of order filed by the Virginian Railway Company April 28, 1925.

Answer on behalf of complainants to petition of the Virginian Railway Company filed May 2, 1925.

Answer of the Chesapeake & Ohio Railway Company to petition of Virginian Railway Company for reopening and modification of order filed May 9, 1925.

Order of the Commission entered May 11, 1925.

Petition for modification of the Commission's order by the Virginian Railway Company filed May 14, 1925, and

Order of the Commission entered May 14, 1925, in cases No. 14454, Wyoming Coal Company et al. v. Virginian Railway Company et al., and 13832, Gulf Coal Company v. Virginian Railway Company, et al.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of June, A. D. 1925.

George B. McGinty, Secretary of Interstate Commerce Commission. (Seal.)

[fol. 1459] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 14454

WYOMING COAL COMPANY et al., Complainants,

VS.

THE VIRGINIAN RAILWAY COMPANY et al., Defendants

Docket No. 13832

GULF COAL COMPANY, Complainant,

VS.

THE VIRGINIAN RAILWAY COMPANY et al., Defendants

Statement of Evidence

Hearing Room, I. C. C. Building,
Washington, D. C., Monday, February 5, 1923.

Met pursuant to notice at 10 o'clock a. m. before Examiner Hunter.

APPEARANCES OF COUNSEL

Mr. Francis B. James, Mr. E. E. Williamson, and Mr. [fol. 1460] Ewing H. Scott, 804-808 Westory Bldg., Washington, D. C., appearing for complainants.

Mr. James W. Carmalt, Southern Bldg., Washington, D. C.; Mr. E. W. Knight, Charleston, W. Va., and Mr. W. H. T. Loyall, Norfolk, Va., appearing for the Virginian Railway Company, defendant.

Mr. S. B. Avis, Charleston, W. Va., appearing for MacAlpin Coal Company, et al., interveners.

Mr. George T. Bell, Woodward Bldg., Washington, D. C., appearing for the Scotia Coal & Coke Company and other Chesapeake & Ohio local operators who intervene in Docket 13832.

Mr. A. R. Yarborough, Charleston, W. Va., appearing for the Kanawha Coal Operators Association and the Logan Coal Operators Association, interveners.

Mr. S. C. Higgins, Traffic Manager, Box 336 Mount Hope, W. Va., appearing for the New River Coal Operators Association, and other interveners.

Proceedings

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Examiner Hunter: The Interstate Commerce Commission has set for hearing at this time and place Docket No. 14454, Wyoming Coal Company, et al., v. The Virginian Railway Company, et al. Also Docket 13832, Gulf Coal [fol. 1461] Company, v. The Virginian Railway Company, et al., has been set for further hearing. Is it the desire of the parties to stipulate that the record in Docket 13832 shall be considered a part of the record in Docket No. 14454 and that the two cases be consolidated for hearing today?

Mr. Scott: That is the wish of the complainants.

Mr. Carmalt: That is also the wish of the Virginian Railway Company, defendant. I filed a motion last week to effect that, and stated therein that that was agreeable to Mr. Scott.

Examiner Hunter: The two cases will be consolidated, and the full record will consist of the testimony previously taken in Docket 13832 and such testimony as may be taken today.

Who appears for complainants, and please state whether you appear for the complainants in both cases or in one.

Mr. Scott: E. E. Williamson and E. H. Scott appear for the complainants in both cases. Also the interveners in Docket 13832, who are complainants in Docket 14454.

Examiner Hunter: Who appears for the defendants?

Mr. Carmalt: Mr. Examiner, I appear for the Virginian Railway, and with me Mr. E. W. Knight, General Counsel, Charleston, W. Va., and Mr. W. H. T. Loyall, General Solicitor, Norfolk, Va. We appear for the Virginian Railway in both cases.

[fol. 1462] Examiner Hunter: Are there any interveners?

Mr. Avis: I desire to file an intervening petition in behalf of the MacAlpin Coal Company; Slab Fork Coal Company; Alpha Pocahontas Coal Company; Barkers Creek Coal Company; Beekley Coal & Coke Company; Beekley Pocahontas Coal Company; Crab Orchard Fuel Company; Cranberry Fuel Company; Dunn Loop Coal & Coke Company; East Gulf Coal Company; Glencoe Coal Company; Harty Coal Company; Lillybrook Coal Company; Long

Branch Coal Company; Lee Coal Company; Lick Fork Colliery Company; McKell Coal & Coke Company; Mabscott Coal & Coke Company; Micajah Pocahontas Coal Company; Monticello Smokeless Coal Company; Mead-Pocahontas Coal Company; New River Collieries Company; Pickshin Coal Company; Prince Wick Coal Company; Pemberton Coal & Coke Company; Pemberton Fuel Company; Raleigh-Wyoming Coal Company; Raleigh Fire Creek Coal Company; Sabine Collieries Corporation; Stuart Colliery Company; Smith-Pocahontas Coal Company; Thermo-Pocahontas Coal Company; Tommy Creek Coal Company; Wood-Sullivan Coal Company; E. E. White Coal Company; Willis Branch Coal Company; White Oak Fuel Company; Winding Gulf Colliery Company; Raleigh Coal & Coke Company.

Those companies, 38 in number, operate on the lines of the Virginian Railroad and this petition in intervention is in opposition to so much of the complaint as prays for the through routes and joint rates.

[fol.1463] Examiner Hunter: This intervening petition will be filed.

Mr. Bell: Mr. Examiner, I desire to intervene in Docket No. 14454 on behalf of the Scotia Coal & Coke Company and other local operators on the Chesapeake & Ohio who intervened in the Gulf Coal Company case, and for brevity, they adopt the allegations of the intervening petition that has just been filed by the MacAlpin Coal Company and others. I might elaborate on that just a little bit, Mr. Examiner, to the effect that while the interveners on whose behalf the petition has just been filed by Mr. Avis, are located on the Virginian, the operators whom I represent are located on the Chesapeake & Ohio and their only interest in this proceeding at this time is to oppose the promulgation of through routes and joint rates to the West?

Mr. Yarborough: A. R. Yarborough, Charleston, W. Va. I would like to file a petition in intervention for the Kanawha Coal Operators Association and the Logan Coal Operators Association, protesting against the establishment of through routes and joint rates via Deep Water and the Virginian.

Examiner Hunter: This petition will be received.

Mr. Scott: Will it be necessary to make any announcement on the record as to the manner in which the pages will be numbered?

Examiner Hunter: Yes. The reporter will number the [fol. 1464] pages beginning today, consecutively from the end of the testimony taken in Docket 13832, and the exhibits will also be numbered in numerical order.

The complainant may proceed.

Mr. Scott: We will call Mr. W. F. Tams.

W. F. TAMS was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scott:

Q. What is your full name?

A. W. F. Tams.

Q. And where do you reside?

A. Tams, W. Va.

Q. What is your business, Mr. Tams?

A. Coal mining.

Q. With what company are you connected?

A. With the Gulf Smokeless Coal Company; the Gulf Coal Company; and the Wyoming Coal Company.

Q. What is your official connection with each of those companies?

A. General manager.

By Mr. Carmalt:

Q. General manager of all of them?

A. Yes, sir.

By Mr. Scott:

Q. By experience and training you are a civil engineer, [fol. 1465] are you not, Mr. Tams?

A. Yes, sir.

Q. Along what lines has your experience as an engineer been, generally?

A. It has been along railroad construction work and coal mining work.

Q. With what railroads were you connected at various times?

A. I was connected with the Illinois Central; the Seaboard Air Line; the Chesapeake & Ohio Railway. I was with the Chesapeake & Ohio Railway about 12 years.

Q. In what capacity were you connected with the Chesapeake & Ohio Railway?

A. From the fall of 1912, until March, 1918, in charge of construction work on the Richmond Division and the Newport News terminal.

Q. Were you connected with the Chesapeake & Ohio Railway at the time the Deep Water yard was laid out?

A. Yes, sir.

Q. Did you participate in any manner in the planning of the Deep Water yard?

A. Yes. I got up an estimate and plan for the Deep Water yard which was after modified in conference between the then manager of the Chesapeake & Ohio C. E. Doyle, and Mr. Dupuy, the head of the Virginian at that time.

Q. In what material respects did the plans as finally [fol. 1466] adopted differ from the original plans which you drew?

A. The capacity of the yard was cut down from over 350 cars, as I recollect, to the present capacity of about 200 cars.

Q. Did you consider it at that time feasible to lay out the yard at Deep Water with a capacity of 350 cars?

A. Yes, sir.

Q. Have you read the testimony of W. P. Tams, Docket 13832, relating to the Deep Water yard, particularly his testimony with reference to the present capacity and feasibility of enlarging the present tracks?

A. Yes, sir.

Q. To save time will you confirm the testimony that Mr. Tams gave in the other case?

A. Yes. I will say that it is perfectly practical and feasible to extend the yard eastward a thousand feet or more without undue expense. Also to put in a switching lead, extending further east if necessary, at a not unwarranted expense.

Q. With those enlargements how many cars would the enlarged tracks accommodate?

A. About 350.

Q. Are you familiar with the interchange yards at Pemberton, W. Va.?

A. Yes, I am.

Q. Have you personally inspected the yards at that point?

[fol. 1467] A. I am.

Q. Will you briefly describe the tracks at that point, and the facilities for interchange?

A. At Pemberton?

Q. At Pemberton.

A. There are two yards or interchange tracks at Pemberton of 60 cars capacity each. The cars which the Virginian Railway delivers to the Chesapeake & Ohio for loading at the Raleigh and the Cranberry mines pass through those tracks. Also the cars going to the mines served locally by the Virginian Railway, from Pemberton to the upper end of the Piney Creek Branch are distributed from those yards, and assembled again there after being loaded.

By Mr. Carmalt:

Those 60-car yards are one on each railroad?

A. No, sir. They are both on the Virginian Railroad.

Q. Not on the Chesapeake & Ohio?

A. No, sir. The Chesapeake & Ohio has tracks close to Pemberton.

By Mr. Scott:

Q. I did not understand whether you stated whether coal coming off of the upper Piney Creek Branch of the Virginian Railway was interchanged?

A. It is assembled there in the trains for movement from Pemberton to Princeton.

Q. Have you any information as to how many cars per day might be passed through the interchange yards at [fol. 1468] Pemberton?

A. The records of the Virginian Railway for the month of October, 1922, show that there were loaded on the joint mines beyond Pemberton, that is, the Raleigh and Cranberry mines, 1,000 equivalent 50-ton cars. That is in round

numbers. Nine hundred and ninety some. Above Pemberton at the local Virginian mines there was loaded 716, I think, making a total of 1,716 or 1,720 equivalent 50-ton cars loaded and interchanged through the Pemberton yard tracks in the month of October.

Q. The capacity of those tracks you say is 120 cars?

A. 120 cars; 60 cars each. There was a larger movement previous.

Q. What is the largest movement, Mr. Tams, of which you have any ready reference, if you have reference to the larger movements?

A. Well, during the month of July, 1920, according to the records, there were approximately 1,200 equivalent 50-ton cars interchanged with the Chesapeake & Ohio Railroad at Pemberton and approximately 1,000 50-ton cars loaded at the local Virginian mines above Pemberton. These figures do not include the loadings for Affinity mine. It is my impression that the loads from the Affinity mine are brought into Pemberton yards before being handled to Princeton, but I am not certain about the Affinity mine.

[fol. 1469] By Mr. Carmalt:

May I interrupt for a moment to ask whether the cars that reported as interchanged at Pemberton, are cars moving from the Chesapeake & Ohio mines to the Chesapeake & Ohio?

A. No, sir. The Virginian cars delivered empty to the Chesapeake & Ohio and received back loaded from the Chesapeake & Ohio. That is entirely separate from the operation of the Stone Coal Branch by the Chesapeake & Ohio.

Q. Those are cars that have gone over onto the Piney Branch of the Virginian?

A. Yes, sir. Cars going empty off of the Virginian onto the Piney Branch and received back loaded.

By Mr. Scott:

Q. It is an actual interchange operation, as I understand it?

A. Yes, sir.

By Mr. Carmalt:

Q. But it is the Piney Branch of the Chesapeake & Ohio and not the Virginian?

A. Yes, the Piney Branch of the Chesapeake & Ohio.

Q. That is to cover mines from which the Virginian publishes rates on the Piney Branch of the Chesapeake & Ohio?

A. It covers from Viacova to and including Westwood and the Cranberry mine. I am not familiar with the rates.

By Mr. Scott:

Q. For that movement which you described during July, 1920, did you state what that would make the average interchange movement per day?

[fol. 1470] A. That would make the average interchange movement per day about 75 cars, but as a matter of fact, operating conditions are such that there are bound to have been days when 80 or 90 or more cars were interchanged through the Pemberton yards.

Q. When you say 75 cars you mean 75 cars each way?

A. Yes, each way per day. That is, taking 30 days in the month, 2,200 cars the total for the month.

Q. There would be 150 cars pass through the yard?

A. 150 cars would pass through the yard.

Q. Have you made any investigation to ascertain whether the tracks at Pemberton are capable of enlargement?

A. Yes. The yard could be enlarged.

Q. To what extent do you estimate?

A. Two additional tracks could be put in there, of 60 cars each.

Q. Which would make a total capacity of about 240 cars?

A. Yes, sir.

Q. Now, is there interchanged between the Chesapeake & Ohio Railway and the Virginian Railway at Stone Coal Junction?

A. Yes.

Q. Will you briefly describe the capacity of that interchange yard and the movement through the yards if you have any particular information as to the movement?

[fol. 1471] A. There are four interchange tracks at Stone Coal Junction with an approximate capacity of 60 cars each,

or a total of 240 cars. The Chesapeake & Ohio Railway delivers empty cars to the Virginian at Stone Coal Junction. The Virginian distributes those cars at mines on the Stone Coal Branch between Stone Coal Junction and Prince Wick; brings the loaded cars back to Stone Coal Junction, delivering them to the Chesapeake & Ohio and the interchange tracks there.

Q. Do you have any record of the number of cars passing through Stone Coal interchange yards?

A. In the month of June, 1922, there were 1,810 cars passing through the Stone Coal yards. That is to say, there were 1,800-odd cars loaded at the Stone Coal mines for shipment over the Chesapeake & Ohio Railway, which passed through the yard.

By Examiner Hunter:

Q. In your statement of the number of cars passing through the yards, that means the number of loaded cars?

A. That means the number of loaded cars and there is the same number of empty cars. I did not make that clear as to Stone Coal Junction, but Mr. Scott brought that point out as regards Pemberton. There were 1,800 cars each way in June.

By Mr. Scott:

Q. Have you anything further you wish to say in that connection? Any specific figures as to movements through [fol. 1472] Stone Coal Junction?

A. No. These are the only figures that I have in mind now as to the movements through Stone Coal. You do not mean now as to any other possibilities?

Q. I thought possibly you had some other figures?

A. You mean as to the possibilities of other operations through Stone Coal?

Q. No. I thought perhaps you had some specific figures as to a greater movement than you described?

A. No. I did not look any further back than April, 1922, and apparently June, 1922, which was the last month of free car supply, in the New River district on the Chesapeake & Ohio, was the heaviest month.

Q. Then you say that in your judgment the Stone Coal interchange tracks are used to their full capacity?

A. Not at the present time, nor were they in June. In my judgment the limiting factors in June were the grades, and the absence of passing tracks between Stone Coal Junction and Tunnel Siding on the Chesapeake & Ohio. That limited the movement for Stone Coal Junction much more than the interchange facilities.

Q. I will show you a map, Mr. Tams, that will be offered later as an exhibit, and I will ask you a question or two as to the various operations.

Mr. Scott: Mr. Examiner, for reference, we might mark [fol. 1473] this exhibit.

Examiner Hunter: Yes. If there is no objection this exhibit will be received as Exhibit No. 61.

(The map referred to was received in evidence, marked "Complainants' Exhibit No. 61, Witness 'Tams,'" and the same is forwarded herewith.)

By Mr. Scott:

Q. Mr. Tams, assuming that there might be a westbound movement of coal from the mines of the complainant at Wyco, Devil's Fork and Corinne, how would you say that the movement from those mines to Stone Coal Junction would compare, from a physical standpoint, with the movement from Prince Wick and other mines on the Stone Coal Branch of the Virginian Railway?

A. Well, I would say that it would take no more work to move cars from between Stone Coal Junction and Devil's Fork, Wyco and Corinne and return them to Stone Coal Junction loaded than it would to move the empties from Stone Coal Junction to points between Besoco and Prince Wick.

Q. How do the distances compare?

A. From Stone Coal Junction to Prince Wick, I think is approximately 8 miles. From Stone Coal Junction to Allen, which is a point at which the loads from Wyco mine would go onto the Winding Gulf branch is four miles, I think. From Corinne to Stone Coal Junction is approximately 6 miles. In placing the cars at the Prince Wick mine and the [fol. 1474] Lillybrook and Pickshin mines, the empties are raised through a vertical height of approximately 400 feet in that distance of 8 miles, Prince Wick being at an eleva-

tion of around 2,000 feet above sea level, Stone Coal Junction 1,600 feet above sea level. Allen is 100 feet lower than Stone Coal Junction and Corinne about 150 feet lower than Stone Coal Junction. It would not appear to me to be any more costly to handle loaded cars a distance of five or six miles, lifting them from 100 to 150 feet than it would to handle the empty cars up to points between Besoco and Prince Wick, raising them 300 to 400 feet above Stone Coal Junction.

Q. As I understand it, those figures that you have just given—

A. (Interposing.) They are based on the Virginian Railway profile.

Q. That is Exhibit 23, is it not?

A. Yes. That is my recollection of the number of the exhibit.

Q. As I understand, these figures which you have given, it means that the movement from Corinne to Stone Coal Junction would be on a maximum grade against the load—

A. (Interposing.) Of about six-tenths per cent; 30 feet to the mile, whereas the grades on the upper end of the Stone Coal Branch run as high as three per cent, or 150 feet to the mile.

[fol. 1475] By Mr. Carmalt:

Q. Against the loads?

A. Against the empties.

By Mr. Scott:

Q. The grade on the Stone Coal branch is with the loads?

A. Yes, sir.

Q. And against the empties?

A. Against the empties, but a very much steeper grade than it is between Stone Coal Junction and Corinne.

Q. A grade of three per cent against the empties on the Stone Coal branch and a grade of six-tenths of one per cent—

A. (Interposing.) Against the loads between Corinne and Stone Coal Junction.

Q. That is all shown on Exhibit 23?

A. Yes, sir.

Q. Now, assuming that the coal from the three mines of the complainants between Stone Coal Junction and Mullens were not delivered at Stone Coal Junction to the Chesapeake & Ohio Railroad but were taken up to Pemberton and there interchanged, how would you say that that service would compare with the service from the mines on the Stone Coal Branch?

A. I would say it would be approximately the same over the Virginian as over the Chesapeake & Ohio. That is, the cost of the service, if anything, to my mind, would be less on the Virginian than on the Chesapeake & Ohio, due to the [fol. 1476] fact that the Virginian has more passing facilities and somewhat better roadbed, with approximately the same grades as the Chesapeake & Ohio.

Q. What is that grade, Mr. Tams?

A. The ruling grade is approximately two per cent in either case between Stone Coal Junction and Pemberton—the ruling grade against the loads.

Q. The two roads practically parallel each other from Stone Coal Junction to Pemberton, do they not?

A. Yes, sir.

Q. Is there any particularly difficult operation on the Chesapeake & Ohio?

A. Yes. There is a switch-back movement on the Winding Gulf Branch of the Chesapeake & Ohio. There is a straight movement on the Virginian.

Q. That switch-back operation is shown on pages 13 and 14 of Exhibit No. 45 in Docket 13832, is it not?

A. Yes, sir.

Q. What is the maximum grade of the switch-back shown to be?

A. It appears to be 100 feet to the mile or 1.94 per cent grade.

Q. How does the track, from the standpoint of construction of the Virginian Railway from Stone Coal to Pemberton compare with the construction on the Chesapeake & [fol. 1477] Ohio Railway?

A. It is a better track and roadbed; better ballasted and slightly heavier rail.

Q. It makes for better conditions of operation?

A. Better conditions of operation, even with the same grade.

Q. Now, taking the mines of the two complainants located at Fireco and Johnben—

Mr. Carmalt: Before you take this up, would you mind making clear to me the purpose of this testimony with reference to these mines from Corinne to Stone Coal Junction? Is it the thought that the joint rates that I understand are being asked for should apply via Pemberton or via Stone Coal Junction or via Deepwater?

A. It is immaterial to complainants whether the coal is interchanged at Pemberton or Stone Coal or Deepwater. It was our thought simply to compare the conditions of operation from the complainants' mines through these junctions, with the operations which are now actually being performed through those points.

Mr. Carmalt: Well, the operation here—you have not completed your comparison, I take it, because in the situation from the Stone Coal Branch, the only coal that moves up the Winding Gulf is the Chesapeake & Ohio coal which moves from mines on the Stone Coal Branch from which [fol. 1478] they publish rates.

Mr. Scott: Well, Mr. Tams is simply testifying as to the physical standpoint. He is comparing the physical operation of the Stone Coal branch with the physical operation of these mines below Stone Coal Junction on the Virginian Railway. In case it would move through Stone Coal Junction and be interchanged at Stone Coal Junction, the physical operation would be identical, as I understand it.

By Mr. Scott:

Q. Is that correct, Mr. Tams?

A. Yes. I was only trying to show that from a physical standpoint it was no more difficult or no more expensive to the Virginian to handle coal from the Corinne and Wyco to Stone Coal Junction than it is to handle coal for the Chesapeake & Ohio from Stone Coal Junction to Prince Wick and the mines between.

By Mr. Carmalt:

Q. You do not mean just that, do you? You mean to handle coal from Prince Wick to Stone Coal Junction, don't you?

A. Yes, sir.

By Mr. Scott:

Q. It is true that under the arrangements, coal going west towards the Piney Creek Branch, up to Prince Wick and from the mines on the Stone Coal Branch, is technically Chesapeake & Ohio coal. That is through the operation of this trackage agreement performed by the Virginian.

[fol. 1479] Mr. Carmalt: Excuse my interruption. I just wanted to get that clear.

By Mr. Scott:

Q. Now, taking the mines of the two complainants located at Fireco and Jonben, located on the upper Piney Branch of the Virginian Railway, how would you say the service from those mines to Pemberton would compare with the movement of coal from mines on the Stone Coal Branch from Prince Wick to Stone Coal Junction?

A. It would not cost as much to handle coal between Fireco and Pemberton as it does between Prince Wick and Stone Coal Junction because the grades on the upper Piney are very light. Those on the upper end of Stone Coal Branch are three per cent.

Q. There is practically a water level line on up the Piney, is there not?

A. Yes, from Pemberton up and within a mile of Fireco or half a mile of Fireco.

By Mr. Carmalt:

Q. It depends on how level the water is, doesn't it?

A. Well, it would be considered level in West Virginia.

By Mr. Scott:

Q. What does Exhibit 23 show the grade of that branch to be?

A. About 20 feet to the mile, I believe.

Q. There are short grades of 13 feet to the mile?

A. Yes, sir. That is the steepest grade I see between [fol. 1480] Pemberton and Fireco. This table at Fireco shows a grade of .6 per cent.

Q. Is coal originating at the mines and Jonben and Fireco now assembled at Pemberton?

A. Yes, sir.

Q. It would be assembled at Pemberton regardless of whether it was moved east or west?

A. Yes, regardless of whether it would go into Princeton over the Virginian or whether it would be delivered to the Chesapeake & Ohio at Pemberton. It would go into Pemberton yard anyway, the way the road is now operated.

Q. Do you think of anything further that you wish to say in connection with the operation in this district?

A. No, I haven't anything further.

Mr. Scott: You may cross-examine.

Cross-examination.

By Mr. Carmalt:

Q. Mr. Tams, you did not testify at all about the operation from the Trace Fork Coal Company, did you?

A. No, sir.

Q. This comparison which you have made between the operation on the Stone Coal Branch, that is, between Mulens and Stone Coal Junction, you do recognize that the grade is against the load in the one case and in the other, the grade runs with the load?

[fol. 1481] A. Yes. I brought that out; particularly the difference in the amount of the grade. Six-tenths of one per cent against the loads and three per cent against the empties.

Q. Well, you understand that the arrangement for the operation of the Stone Coal Branch is one under which the Chesapeake & Ohio has trackage rights to go to Prince Wick whenever it sees fit?

A. I am not familiar with the exact arrangement. It is my impression that they pay the Virginian \$6 per car but I may be mistaken about that—for handling coal between Stone Coal Junction—

Q. You have the impression that that switching charge is a reciprocal charge, haven't you?

Mr. Scott: I do not believe that Mr. Tams is qualified to testify about those matters. They are all in the record, are they not, in the other case, in the contracts?

Mr. Carmalt: I think so. I do not know that it is important. I just wanted to know what his knowledge was about that situation.

Mr. Scott: If he knows, I haven't any objection.

The Witness: No. I do not know just the exact status.

By Mr. Carmalt:

Q. Now, with reference to these interchange yards at Stone Coal Junction and at Pemberton and Deepwater, as I gather it from your testimony, you considered the Deep- [fol. 1482] water yard now to be slightly smaller than the yard at Stone Coal Junction in capacity?

A. Yes, sir. Forty cars less, approximately.

Q. You measure that capacity by the actual track space that would be covered by that many cars if they were all full?

A. Yes; 40 feet to the car is considered a car length.

Q. Would you consider that the yard at Stone Coal Junction was capable of handling a greater or less interchange than the yard at Deepwater, assuming other conditions the same?

A. Well, it is approximately the same.

Q. That is to say, a 200-car yard at Deepwater, as arranged, would handle about the same as the 240-car yard at Stone Coal Junction?

A. I think it could be operated to handle the same.

Q. What direction does Stone Coal Junction run? Is there any switch-back connected with it?

A. No. There is no switch-back.

Q. Do the cars move straight through the yards?

A. The cars move straight through the yard, yes.

Q. And those are solid trains of cars—the empties come there in solid trains, and it is delivered in solid train-loads at Stone Coal Junction?

A. Yes. They are delivered as empties in trains, but as loads—well, I would hardly know whether to call it a train movement or not.

Q. Call it a drag movement?

A. Yes, though I would hardly know whether to call it a [fol. 1483] train movement from Prince Wick into the yard or not.

Q. I am talking about through the yard.

A. Oh, they are handled in solid blocks; in convenient length cuts of cars.

Q. You designed the yard at Deepwater?

A. As originally laid out, but not as it is now.

Q. In what respects was there a difference in the design?

A. It was cut down in capacity.

Q. Well, that is just a question of the number of tracks that were laid in there.

A. It is my recollection that we provided for a switching lead on the east end of the yard, which was omitted.

Q. Another switching lead to the main track?

A. A switching lead south of the main tracks of the Chesapeake & Ohio Railway.

Q. So that as you designed it, it would be a more effective yard for the prompt interchange and billing of cars there.

A. It would have the advantage of a switching lead, whereas now they switch on the main line of the Chesapeake & Ohio Railroad.

Q. Knowing my ignorance of these matters, will you explain what you mean by "a switching lead" that you designed there? Is it just running from one switch track to another?

A. No. A switching lead is a track which enables the [fol. 1484] engines to perform a switching movement and to shift cars from one track in the yard to another without going out on the main line of the railway and interfering with the main line traffic.

Q. Now is there any lead in the yard that permits that?

A. Not the east end. The yard can be switched from the west end without going out on the main line of the Chesapeake & Ohio, but not from the east end.

Q. Is this yard a joint yard of the Chesapeake & Ohio and the Virginian?

A. It is my impression that it is.

Q. There is only one yard there?

A. There is only one yard there, three tracks belonging to the Chesapeake & Ohio and I think three to the Virginian.

Q. Where is the access to the Chesapeake & Ohio mine track? Which part of the yard?

A. It is at the east end of the yard; up at the station.

Q. Which way does it face?

A. How is that?

Q. Which direction does that lead run onto the main track?

A. It heads east.

Q. It heads east?

A. Yes.

Q. And the traffic that you anticipated to be handled here is going west, is it not?

[fol. 1485] A. Yes. There is however a cross-over there between the main lines.

Q. There are two tracks on the main line?

A. Yes.

Q. Of the Chesapeake & Ohio?

A. Yes.

Q. This lead runs onto the eastbound track?

A. Yes.

Q. There is no connection from the yard to the west-bound track except by way of the cross-over from one main track to the other?

A. I think that is all.

Q. Do you consider that that sort of an interchange at Deepwater, capable of handling the same number of cars with a 200-car capacity in the yard, as Stone Coal Junction yard with a 240-car capacity, where there is a lead in the direction in which the traffic is hauled?

A. It might not be able to handle it as advantageously.

Q. Can it handle it as promptly?

A. Possibly not as promptly.

Q. Would it be as effective a yard?

A. That would depend entirely upon how the Chesapeake & Ohio proceeded to handle coal between Deepwater and Handley.

Q. Handley lies east and west?

A. Handley lies west. It is my thought that the Chesapeake & Ohio would possibly take the coal in there in short cuts into Handley yard, using a shuttle movement of engines, and assemble the coal in Handley yard; not try to make up trains at Deepwater.

Q. There would not be any practical possibility of using the Deepwater yard to make up the trains, would there, now?

A. I should not think that it would—not making up long trains.

Q. It would be a very expensive operation?

A. I should think so. I won't say how expensive, but it would be more expensive than it would be to handle short cuts.

By Mr. Scott:

Q. What is the distance from Deepwater to Handley?

A. Eight or ten miles. Eight miles, I believe.

Q. Is that a regular assembly point?

A. Handley is a regular division point; an assembly point for coal off of the Powellton Branch and the Morris Creek Branch of the Chesapeake & Ohio. Coal is made up into trains for movement west and I should think that coal from the Deepwater yard would be taken to Handley for assembly into trains.

By Mr. Carmalt:

Q. Where do these cuts move now to Handley? From what point?

A. You mean——

[fol. 1487] Q. On the Chesapeake & Ohio's own coal now that moves into Handley?

A. They move from points on the Powellton Branch. I forget the name of the yard. They move from points on the Morris Creek Branch—just short distances into Handley Yard.

Q. There is not any traffic from any of the regions that are served by the Virginian that goes in there for making up trains, is there?

A. During the past year, from the car records of the Virginian Railway, it appears that the monthly average of 700-odd cars were received from the Chesapeake & Ohio at Deepwater and 800-odd delivered to the Chesapeake & Ohio at Deepwater, or vice versa, I forget which; an average of 800 cars each way through the Deepwater yard per month.

Q. That is about one half of what is handled through the Stone Coal Junction interchange that you have described?

A. It is about half of what is handled through the Pemberton yard, with a capacity only slightly more than half as much as the Deepwater yard.

Q. I am coming to Pemberton later.

A. Oh, I beg your pardon.

Q. Did you say whether or not the Deepwater yard was now handling about all the traffic that it could handle?

A. No, I should not think that it was.

[fol. 1488] Q. About how near to capacity would you think, just from a rough estimate? You have given a lot of close study to this yard?

A. I should think it ought to handle 80 or 100 cars more per day, if necessary, handling them in short cuts into the Handley yard.

By Mr. Scott:

Q. That is with the present capacity?

A. With its present car capacity of 200 cars.

By Mr. Carmalt:

Q. That is your judgment of it, that it would handle 80 or 90 carsloads? It is now handling about 40 loads through there each way?

A. Thirty each way for the year of 1922 up to and including the month of October, I believe, which was the last figure.

Q. Then you figure that through this 200-car yard involving the use of a cross-over of the main track of the Chesapeake & Ohio, that there could be handled approximately 110 or 120 cars a day each way, under the present track layout?

A. I previously stated 80 or 90 cars.

Q. Additional to what is already there?

A. Additional to what is already there.

Q. That would make around 120 cars a day?

A. Yes, sir.

Q. Do you know of any yard in that neighborhood, of that capacity, that is handling that amount of tonnage?

A. Not at present. I am not familiar with any.

[fol. 1489] Q. Even though it may be a straight line connection in the way of the traffic?

A. I cannot say that I am familiar with any yard now?

Q About this Pemberton interchange, the yards there are all on the Virginian tracks?

A. The yards of which I have spoken are the Virginian yard tracks.

Q Has the Chesapeake & Ohio any interchange yard there?

A. No, not to my knowledge. The interchange is all done through the Virginian tracks.

Q. That is a straight line haul. The Virginian pulls the trains up there and leaves them and the Chesapeake & Ohio comes and hooks onto it and goes away?

A. Yes.

Q. There is no switching to be done? No classification and no making up of trains?

A. No classification, no, sir.

Q. And no making up of trains?

A. Well, the trains I would say, for movement to Princeton might be considered made up in that yard although it is a very simple operation.

Q. Those are the Virginian trains?

A. Those are Virginian trains, yes, sir.

Q. Those trains of cars that are brought down there from Fireco and points on that branch going in the direction of the grade, down the Winding Gulf branch?

[fol. 1490] A. Yes, sir.

Q. There is no interchange of loads from the Virginian to the Chesapeake & Ohio at Pemberton, is there?

A. No. The Chesapeake & Ohio handles its own coal from Stone Coal Junction through Pemberton but not through these yards.

Q. You would not consider Pemberton to be an ideal interchange point on traffic that was involved in a load coming from the Virginian to the Chesapeake & Ohio, would you?

A. It could be interchanged all right.

Q. It would be a very expensive operation to haul loads up the Winding Gulf Branch, wouldn't it?

A. No more expensive than it is for the Chesapeake & Ohio to haul them up now.

Q. The Chesapeake & Ohio has a line haul after it leaves Pemberton?

A. Yes.

Mr. Carmalt: That is all.

Redirect examination.

By Mr. Scott:

Q. Mr. Tams, do you know where the coal coming off of the Gauley Branch, moving westbound, is assembled?

A. No, I am not familiar with the operation on the Gauley Branch.

[fol. 1491] Q. Mr. Carmalt, if I correctly understood him, asked you a question as to the feasibility of interchanging at Pemberton, coal coming from the Virginian mines and the Winding Gulf branch?

A. Yes.

Q. Is it not a fact that at some time during the war period or during the period of Federal control, coal was actually hand-ed by the Virginian Railway to Pemberton and there turned over to the Chesapeake & Ohio for westbound movement?

A. Yes, sir. During the months of January and February, 1919, coal was moved by the Virginian from the Tams mines over the Virginian tracks to Pemberton and delivered to the Chesapeake & Ohio there. There was at a time when there was no Chesapeake & Ohio service on the Winding Gulf branch. It had been abolished during the war and had not been restored at that time.

Q. When you say "from the Tams mine," you mean the mine at Tams?

A. The mine at Tams. There were empty cars delivered by the Chesapeake & Ohio to the Virginian at Pemberton. They were brought down empty by the Virginian to Tams and loaded with coal and returned by the Virginian to Pemberton and there delivered to the Chesapeake & Ohio.

[fol. 1492] By Mr. Carmalt:

Q. When was that?

A. That was in January and February and I think in March, 1919.

Q. When did they change that operation?

A. About April, 1919 the Chesapeake & Ohio service was abolished by the Railroad Administration on the Winding Gulf Branch and our mines only served by the Virginian. That condition obtained until some time in the Spring of 1919, but as I recollect, in January and February and pos-

sibly in March this movement that I speak of, took place, this coal moving to points to which the Virginian did not have freight rates. Most of it I think was for delivery here in Washington.

Mr. Scott: That is all.

By Mr. Carmalt:

Q. Now, the Railroad Administration, in the Spring of 1918, in connection with the Fuel Administration zoned the coal?

A. Yes, sir.

Q. And they did not let any coal from Pemberton and east go west at all, did they?

A. I don't think they did, no, sir.

Q. All of that coal came east over the Virginian, and the Chesapeake & Ohio did not come down the Winding Gulf at all?

A. No.

[fol. 1493] Q. Then when the Fuel Administration stopped the zoning of the coal or ceased functioning, then there was a month or two when the operation was continued the same way?

A. Yes.

Q. But the rates and the routes were still open to the west over the Chesapeake & Ohio?

A. I am not qualified to say as to that. I was only speaking of the physical fact that coal was handled that way.

Q. During that two or three months that the coal did move over the Virginian and was interchanged with the Chesapeake & Ohio and could go over its line?

A. Yes.

Q. And that was discontinued by the Railroad Administration in April, 1919?

A. I forget the exact date, but I think the Chesapeake & Ohio service was restored about that time.

Q. So that the operation was made coincident with or intended to be coincident with the zoning of the coal?

A. Yes.

Q. The purpose of it was to keep the coal moving with the grade?

A. No. I do not know that the purpose was to keep the coal moving with the grade.

Q. Well, they broke the operation at the top of the mountain. The Chesapeake & Ohio served all the mines west of [fol. 1494] Pemberton and the Virginian served all the mines east of Pemberton?

A. I do not think that the Chesapeake & Ohio served all the mines west of Pemberton—you mean the mines on the Chesapeake & Ohio? I do not think the Chesapeake & Ohio ever served the Fireco mines, for instance.

Q. They would run with the grade down the other way. They were zoned with the Virginian.

A. That is my recollection.

Q. But there were no mines west of Pemberton that were served by the Virginian at all, were there?

A. No, not between Pemberton and Raleigh, if that is what you mean by west of Pemberton.

Q. That was run coincident with the zoning of the coal, in which all of that coal east of Pemberton went to the Eastern seaboard?

A. Yes, sir.

Mr. Carmalt: That is all.

Examiner Hunter: Witness excused.

(Witness excused.)

Examiner Hunter: The defendants in Docket 14454 have what points of origin? There is Jonben, Wyco, Corinne, Devils Fork and Fireco.

Mr. Fireco: Yes. They are all shown on the exhibit [fol. 1495] that was identified a little while ago, the name of the company and the shipping station.

Examiner Hunter: Yes, I see.

EZRA E. WILLIAMSON was called as a witness and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scott:

Q. Mr. Williamson was the exhibit which has been identified as Exhibit 61, prepared by you or under your direction?

A. Under my direction, sir.

Q. What does that exhibit show?

A. It shows the Virginian Railroad; the Chesapeake & Ohio Railroad in the Winding Gulf, and it takes in the New River field of the Chesapeake & Ohio. It shows in colors the trackage arrangements which are explained in the circle on the exhibit. This exhibit also shows the location of the complainants in the present case.

Q. Aside from showing the location of the complainants in this proceeding, does that exhibit differ in any respect from your exhibit No. 9 in the former proceeding?

A. Only to the extent that in the circle at the lower right-hand corner I have struck out the words "jointly by the C. & O. and the Virginian." It indicates that those tracks [fol. 1496] from Stone Coal Junction to Prince Wick are owned by the Virginian and operated by the Virginian. The Virginian performs service over those tracks to Stone Coal Junction for the Chesapeake & Ohio, on coal going out via the Chesapeake & Ohio Railroad.

By Examiner Hunter:

Q. I do not understand what you mean by saying that the Virginian does work for the Chesapeake and Ohio unless it be that the Chesapeake & Ohio has trackage rights.

A. They have rights over those tracks, yes, sir; they have rights over those tracks as an operating arrangement and the Virginian Railroad and its power takes the Chesapeake & Ohio cars up from the yard at Stone Coal Junction and places the empties at the mine on the Stone Coal branch and then the Virginian power brings the loaded cars back and places them at the yard at Stone Coal Junction, where the Chesapeake & Ohio takes hold of them. In other words, as I have shown here also, the Complainants, the Wyoming Coal Company, the Devils Fork Coal Company and the Miller-Pocahontas Coal Company—the Power of the Virginian would take the loaded cars from those three mines at Stone Coal Junction. In other words, the power of the same company would take the coal from those three complainant mines—the same power of the company that would handle the coal for the Chesapeake & Ohio off of the Stone Coal Junction Branch.

[fol. 1497] We have also shown on this exhibit the Trace Fork Coal Company at Tracoal. Tracoal is just north of

Mullens. Coal from that complainant, in connection with the Chesapeake & Ohio could move out via Deepwater or it could move through the Mullens yard, via the yard at Stone Coal Junction and there be turned over to the Chesapeake & Ohio; or it could also move through the Mullens yard by the Virginian, delivered to the Chesapeake & Ohio at Pemberton.

The most natural route for the coal from the Trace Fork Coal Company would be via the Deepwater gateway.

I have shown on this exhibit — complaints the Wilton Smokeless Coal Company and the Leckie Fire Creek Coal Company in the vicinity of Fireco. That coal from those two mines can move out either via Pemberton and the Chesapeake & Ohio or via Pemberton, the Mullens yard and out by Deepwater.

The complaint in the Wyoming Coal Company case does not specify via which route the joint rates are asked to be established. So far as the complainants are concerned, if for practical, economic operation, it is the desire of the Virginian and the Chesapeake & Ohio to handle the coal from the vicinity of Fireco to the Pemberton yard, and there deliver it to the Chesapeake & Ohio, it is entirely agreeable to the complainants. If it is the desire of the Virginian and the Chesapeake & Ohio to handle the coal [fol. 1498] from the Wyoming Coal Company, the Devil's Fork Coal Company or the Miller-Pocahontas Coal Company to the Stone Coal yard and there deliver it to the Chesapeake & Ohio or if the Virginian prefer- to haul from those three mines to the Pemberton yard and there deliver to the Chesapeake & Ohio, it will be entirely agreeable to complainants. The routes are now open there via Deepwater, via Stone Coal Junction or via Pemberton; so that if for economic arrangement and operation and the best use of the facilities it is agreeable to the complainants for the defendants to fix up whichever route they desire to handle the business by.

By Mr. Scott:

Q. But you are not suggesting how the coal should move, but how it might move, is that the idea?

A. How it might move, yes, sir; but with the joint rates established from the mines of the complainants, the New River rate, it is agreeable to the complainants for the de-

fendants to fix up whichever route they desire to forward this coal by to the West.

Q. It is your understanding that through rates on the combination basis now apply via those three routes?

A. Under the tariff they are combination rates via those three routes.

By Examiner Hunter:

Q. Is that the combination the same through rate via each of the junctions?

A. No. From the mines in the immediate vicinity of [fol. 1499] Stone Coal Junction, that is, between Mullens and Stone Coal Junction, the rate via Stone Coal Junction would be less than via Pemberton. It is a distance rate up to each, and then the combination rate via Deepwater would be greater than the combination rate either via Stone Coal Junction or Pemberton, being on a distance basis.

Q. On the Chesapeake & Ohio the district rate applies all the way from Stone Coal to Deepwater?

A. Yes, sir. Then it would simply be a question of the distance to Stone Coal Junction and Pemberton or Deepwater and the combination rates would vary as the Virginian factor varied.

By Mr. Scott:

Q. The rate for the Virginian haul is on the basis of distance, is it not?

A. Distance tariffs, yes, sir.

By Mr. Carmalt:

Q. All the mines, Miller-Pocahontas, Devil's Fork and the Wyoming Coal Company would make the cheapest combination via Stone Coal Junction and the Leckie Fire Creek Coal Company and the Wilton Smokeless Coal Company would make the cheapest combination via Pemberton? Isn't that a fact?

A. That would be true, yes, sir.

By Mr. Scott:

Q. In Docket 13832 you offered as your Exhibit No. 12 a statement comparing the average distances from coal shipping stations on the Virginian Railway in the New

[fol. 1500] River district to Kenova, W. Va., with the average distances to the same destinations from coal shipping stations on the Chesapeake & Ohio Railway in the New River district; from stations on the Carolina, Clinchfield & Ohio Railroad from which the Chesapeake & Ohio Railway publishes the New River rates, and from the Outer Crescent districts on the Norfolk & Western Railway. Now, have you prepared a statement to supplement that showing, in which you have endeavored to give the Commission a comparison of the average distances from the Virginian Railway coal shipping stations in the New River district with all mines in the Outer Crescent to representative destinations in Central Freight Association territory?

A. Yes, sir.

Mr. Carmalt: That is the average distances of all the mines in the New River district on the Virginian Railway?

Mr. Scott: That is correct, with the entire Outer Crescent.

We offer the exhibit referred to as complainants' exhibit 62.

Examiner Hunter: Without objection this will be received.

(The document referred to was received in evidence, marked "Complainants' Exhibit 62, Witness Williamson," and the same is forwarded herewith.)

[fol. 1501] By Mr. Scott:

Q. Does that exhibit speak for itself, or is there some comment you wish to make about it?

A. I wish to call attention to the fact that the figures in the righthand column are taken from the Commission's decision in I. & S. Docket 774, 46 I. C. C. 156. With the exception of the last figure at the bottom of the column, the average and that composite average is simply a calculation from the table appearing on page 156 of the Commission's opinion in 46 I. C. C. The distances shown from Norfolk & Western, Pocahontas, Tug River and Clinch Valley districts are the distances shown on Exhibit No. 10 as corrected, in I. & S. Docket 774. All of those distances were figured from Norfolk & Western stations via Kenova. The difference in the distance from all the Virginian mines

and from the Norfolk & Western mines in the Pocahontas, Tug River, Clinch Valley to Kenova is 14 miles. In the column showing the Virginian distances therefore I have shown those distance- to be 14 miles less than the distances from the Pocahontas, Tug River and Clinch Valley district.

I will point out that the average of 531 miles to the destinations grouped in the affected territory is only 13 miles less than the average of 544 miles. That comes about from the disposition of fractions in making the calculation. So that we have a comparison that to the affected territory as known in I. & S. 774—we have an average from [fol. 1502] the Outer Crescent of 515 miles; from the Virginian Railroad 531 and from the Norfolk & Western, Pocahontas, Tug River and Clinch Valley districts, 544 miles.

The average distance from the Virginian mines being approximately between the average from the Outer Crescent and the average from the Norfolk & Western mines to the non-affected territory—that is destination group No. 2:

The distance from the mines in the Outer Crescent is 568 miles; the average from the Virginian is 532 and from the Norfolk & Western 547. To the non-affected territory the average distances from the Virginian mines is less than from the Norfolk & Western group or from all mines in the Outer Crescent. Then the composite which is shown at the bottom is for the mines in the Outer Crescent, 538 miles; from the Virginian mines 531 miles or 7 miles less than the average for the Outer Crescent. While the Norfolk & Western is 545 miles, the Norfolk & Western being greater than either the average from the Virginian or from the Outer Crescent, the Norfolk & Western being 14 miles greater than from the Virginian to the representative points of destination shown. The carriers picked these points of destination in I. & S. 774 as being representative points of destination.

Q. Those are the points shown in the Commission's report, as I understand it?

[fol. 1503] A. On page 156, 46 I. C. C., yes, sir.

Q. Are these figures which you have shown for the Outer Crescent, which are contained in the Commission's report in I. & S. 774—are they complete in every respect, and

would you say that they fairly reflect present day conditions?

A. I would say that you would have to make this allowance for those figures: that at the time the Outer Crescent included the Connellsville district which was the shortest district to these points of destination. In I. & S. 774 to these points of destination, the Commission ordered the same rates from the Connellsville district as from the Pittsburgh district. So that the Connellsville district, if we were making the calculation today, would have to be eliminated from the Outer Crescent, as that was the closest group to all of these points, and it would push the distances back from the Outer Crescent, making the average from the Outer Crescent somewhat greater than these figures. It was impossible to make all of these calculations. It would have been a job that the carriers, in preparing for the other case, would have to spend some three or four months on. But, we make that statement.

Q. But that change would be to the disadvantage of the complainants rather than to their advantage?

A. It would be to the disadvantage of complainants rather [fol. 1504] than to the advantage of complainants.

Q. In other words, if the statement were made to reflect the present day situation accurately, the distances from the Outer Crescent would be greater than those shown there?

A. That is my belief, yes, sir.

Q. I will hand you a map showing the Western Maryland Railway, and call attention to certain marks on that map, and ask you if those marks were made by you or under your direction, and if so, what thought you desire to bring out by that.

A. This map was prepared under my direction. I offer to identify it as complainants' Exhibit 63.

Examiner Hunter: It will be received.

(The document referred to was received in evidence, marked "Complainants' Exhibit No. 63, Witness Williamson," and the same is forwarded herewith.)

The Witness: In connection with Exhibit No. 63, which is a map of the Western Maryland and connections, I have sought to bring out the situation parallel, as far as the Western Maryland in its relation with the Baltimore &

Ohio is concerned, and the Virginian in its relation to the Chesapeake & Ohio.

The Virginian, being a tidewater road, connecting with the Chesapeake & Ohio at Deepwater, handling the coal to tidewater; the Western Maryland being a road that does [fol.1505] not reach the West with its own rails, but is a large handler of coal to tidewater at Baltimore. The Western Maryland parallels the Baltimore & Ohio just as the Virginian parallels the Chesapeake & Ohio to tidewater. On the Western Maryland in Meyersdale district, and in the Cumberland-Piedmont district, there is a semi-bituminous coal, the same as there is in the New River district on the Chesapeake & Ohio and on the Virginian and in the Pocahontas district on the Norfolk & Western.

The Western Maryland road, although handling a large volume of coal to tidewater, also opens its line to the Western markets for the operators on the Western Maryland and from the Meyersdale and the Cumberland-Piedmont district, at the same rates as apply from the New River district on the Chesapeake & Ohio, the Pocahontas district, the Tug River district, the Clinch Valley district on the Norfolk & Western. Coal from Western Maryland mines goes out in connection with the Baltimore & Ohio for the West and it is delivered to the Baltimore & Ohio at Norton; Western Maryland tariff No. 7257.

Q. That is in what district?

A. That is from the Cumberland-Piedmont district; routes taking the same rates as the New River district; routes via the Baltimore & Ohio and the Norfolk & Western.

From Meyersdale on into Connellsville, the Western [fol.1506] Maryland routes coal from that district via Connellsville and the P. & L. E.; but east of Meyersdale to just beyond Cumberland, and then within a line down west of Cumberland, the routing is via Norton and the Baltimore & Ohio, with joint rates the same as apply from the New River district on the Chesapeake & Ohio, and the same joint rates that the complainants are asking to be established from the Virginian mines to the West.

By Mr. Carmalt:

Q. Where is Norton?

A. I will show it to you.

Mr. Scott: On some of these exhibits, Norton is shown as "Roaring Creek Junction".

Examiner Hunter: That is on some copies of Exhibit 63?

Mr. Scott: On some copies of Exhibit 63. That is correct.

By Mr. Scott:

Q. Mr. Williamson, are the rates from the Western Maryland mines westbound published by the Baltimore & Ohio or by the Western Maryland Railroad or by both companies?

A. They are published by both companies; Baltimore & Ohio tariff, coal and coke I. C. C. 2172; Western Maryland tariff I. C. C. 7257.

Q. Do the Cumberland-Piedmont and the Meyersdale districts constitute a part of the so called Outer Crescent?

A. The Cumberland-Piedmont district and the Meyers-[fol. 1507] date district constitute a part of the Outer Crescent.

Mr. Scott: That is all.

Cross-examination.

By Mr. Carmalt:

Q. Mr. Williamson, do you know when the rates were made on the Western Maryland from the Meyersdale and the Cumberland-Piedmont region?

A. The exact date?

Q. Approximately?

A. I do not recall.

Q. Is it of long standing?

A. I think it is quite a period. In fact, it had not occurred to me as anything else. As I understand it, it has been of long standing.

Q. The Western Maryland and the Baltimore & Ohio have some trackage rights over one another's lines down in that territory, haven't they?

A. There is quite a considerable amount of trackage—it is usually trackage rights of the Western Maryland over the Baltimore & Ohio, that is shown here in the dotted line.

For instance, there are trackage rights from a point called Connellsville through to Fairmont and beyond Fairmont the Western Maryland has rights to go over those rails and come down and take the coal back. The same with another branch running from Rockwood to the north.

[fol. 1508] Q. That is in the heart of the Meyersdale and Cumberland-Piedmont region?

A. Yes, sir. The line from Connellsville down to Fairmont is not in the Meyersdale, Cumberland-Piedmont district. The line north from Rockwood is. The line from Connellsville down to Fairmont is in the Pittsburgh district as far as western rates are concerned.

Q. You do not know anything about the divisions that are paid between these roads on that material?

A. I do not know the divisions. I haven't looked those up.

Q. Do you know whether or not joint rates were made in order to give to the Baltimore & Ohio some compensation for the trackage rights which they give to the Western Maryland on those branches?

A. I have no information on that point.

Q. Do you know whether or not coal in this Meyersdale, Cumberland-Piedmont region, served by the Western Maryland, is competitive with the New River coal in West Virginia?

A. It is generally the same character of coal, yes, sir.

Q. As the New River smokeless coal?

A. As the New River smokeless coal. It is a semi-bituminous coal.

Q. Is it the same general character of coal as that in the Fairmont region lying to the west of it?

[fol. 1509] A. No. The Fairmont region is largely the same as the Kanawha district on the Chesapeake & Ohio.

Q. Do you know whether or not the interests that are mining coal on the Western Maryland are, in large measure, the same as those that are mining coal on the Baltimore & Ohio in that territory?

A. Well, I know the Davis Coal & Coke Company are large interests mining on the Western Maryland. The Consolidation Coal Company are large interests mining on the Baltimore & Ohio. The Consolidation Coal Company has mines on the Western Maryland too.

Q. Do you know, from your analysis of the Commission's record in I. & S. 774, who controls the Western Maryland Railroad?

A. Why, I do not recall.

Q. Isn't it a matter of common knowledge, that that is controlled by the Rockefeller interests? Haven't you so understood it?

A. Oh, I understand—I think it is under lease to the New York Central people.

Q. Under lease to the New York Central?

A. At one time it was. I do not know that that lease has been cancelled. There was one time when the P. & L. E. I think leased it. That was the route that the Vanderbilts used to the East. You will find from the P. & L. E. to the [fol. 1510] East there are joint rates from that territory. Some years ago I recall seeing it—it was under a lease arrangement, or under arrangement for a number of years, whereby the New York Central interests had certain control.

Q. Well, they had a traffic agreement at least.

A. It might have been a traffic agreement instead of an out and out lease.

Q. Well, the rates from the Meyersdale, Cumberland-Piedmont region apply via the P. & L. E.

A. Meyersdale?

Q. From the Meyersdale region, don't they?

A. That is because it is up closer to Connellsville where it connects with the P. & L. E. The Western Maryland tariff shows routing from mines west of Meyersdale via the P. & L. E. East of Meyersdale it is out via Norton.

Q. There is a large movement eastbound on the P. & L. E. of grain and other traffic, coming from the P. & L. E. to the Western Maryland, isn't there?

A. I take it there must be interchange of some kind, yes, sir.

Q. There is a very large interchange between the Baltimore & Ohio and the Western Maryland on eastbound tonnage too, is there not, of coal at various points?

A. Well, I rather imagine it is where the Western Maryland would give it to the Baltimore & Ohio rather than the [fol. 1511] Baltimore & Ohio giving it to the Western Maryland. I would not say that there was a very large inter-

change. There might be one way, but I do not think it is the Baltimore & Ohio turning over any coal that it can get a long haul on, to the Western Maryland.

Q. No.

A. Nor the Western Maryland would not turn any coal over to the Baltimore & Ohio for Baltimore.

Q. Don't you know as a matter of fact, that the Baltimore & Ohio does turn over a substantial tonnage of coal going eastbound, to the Western Maryland to haul up to Hagerstown and that gateway?

A. Oh, for that movement, yes, for the Eastern all rail movement where the Baltimore & Ohio does not reach connecting lines—northern connections, the Western Maryland would undoubtedly be an intermediate line for that.

Q. Do you know who controls the Consolidation Coal Company?

A. I have understood it was the Rockefeller interests, but our people down in West Virginia rather think that the big interests should not have favorable rates to the West without their having them also.

Q. The joint rate arrangement between the Western Maryland and the Baltimore & Ohio and the P. & L. E. is a wholly voluntary arrangement?

A. I think that is true at this time, yes, sir.

[fol. 1512] Mr. Carmalt: That is all.

Further cross-examination.

By Mr. Bell:

Q. Mr. Williamson, via which junction were the distances under the heading "Virginian Railway" on your exhibit 62 figured?

A. As I explained, all of the distances via the Norfolk & Western were figured through Kenova. Then I have just taken 14 miles off of that distance, because that is the difference in distance between the average from the Virginian mines to Kenova and the Norfolk & Western mines to Kenova; so that their route beyond Kenova would be common both as to the Norfolk & Western and the Virginian. These figures on that exhibit would reflect that situation.

Q. Then they were figured through Deepwater?

A. The Virginian would be via Deepwater, yes.

Q. Do you remember, in your experience in I. & S. 774, whether any testimony was put in showing the relative operating conditions from one part of the Outer Crescent as against another part of the Outer Crescent or one part of the Inner Crescent as against another part of the Inner Crescent?

A. I do recall that there were some profiles introduced from different fields. The question of going into the operating conditions generally,—that subject was more or less touched upon.

[fol. 1513] Q. But just touched upon?

A. I think so.

Q. In other words, the field of the Commission's investigation in that case was so very large that the consideration was almost entirely confined to relative distances rather than relative operating conditions?

A. The competitive situation; competitive conditions largely.

Q. But I am talking now from an operating standpoint.

A. It was the operating standpoint, as reflected by the distances rather than by, you might say, the grades, and difficulties of that kind. That is true.

Q. Are you prepared to say at this time that the operating conditions from points on the Virginian Railway to the typical destinations named in your Exhibit No. 62, are substantially the same as the operating conditions from all the mines in the Outer Crescent to the same destinations, so that the figure 515 miles for example, to destination group No. 1, can be properly compared with the figure 531 from the Virginian mines to the same destinations? Are you prepared to make that statement here today?

A. Well, you take the whole Outer Crescent, there is different operating conditions from each field. Now, there is included in the Outer Crescent, which the Commission did not show on that page, the Louisville & Nashville mines [fol. 1514] down around Stonega, in Virginia. Now, the distances there, which are not included, would make the distances from the Outer Crescent considerably more. From Stonega up the Cumberland Mountains, over the Divide at the Cumberland Gap, operating conditions there are quite severe; quite so much so that the Louisville & Nashville tried on three occasions to have the rates increased because of those severe operations.

Q. But you say those mines were not included in the Commission's consideration in I. & S. 774?

A. It was considered, but it was not put in that statement. Those distances are greater. In the Gulf Coal case we introduced Exhibit No. 51, which showed the profile of the Norfolk & Western road between Norton and Graham, between which points are Clinch Valley No. 1 and No. 2 mines, and those operating conditions are very severe. The text of those operating conditions is shown in Exhibit No. 52, which was the testimony of Mr. D. E. Spangler, General Superintendent of Transportation of the Norfolk & Western Railroad, in Docket I. C. C. 6334. He points out, from Clinch Valley No. 1 and No. 2 districts how very severe the operating conditions were.

Q. You are not answering my question.

A. I am trying to lay a foundation so that I can answer it, because your question is a very broad one and you cannot [fol. 1515] make a direct answer to it in a very narrow scope. Your answer must be as broad as the scope of your question, and that is what I am trying to do, to broaden the answer so as to be an answer to your question. It may not be just the answer you want because of the broadness and because of the scope, but it will be a direct answer to it.

So that you take from each group in the Outer Crescent, there are operating difficulties; from some more severe than the others. In the general matter of grouping rates, the average of all conditions is taken in consideration, and not simply the severest condition of one particular line.

Q. That is what I thought, and for that reason I did not understand why you were going into all this detail.

A. I was going into it to answer your question.

Q. Are you through with your answer?

A. Unless you want it more elaborate, I am through.

Q. Then you are not prepared to say at this time that the conditions encountered from the Virginian points to the West are substantially the same as the average of the conditions from all districts in the Outer Crescent to the same destinations?

A. I would say that on the general average, taking the whole field, the more favorable and the less favorable, that it reflects fairly average conditions.

Q. Now, Mr. Williamson, do you remember from your [fol. 1516] experience in I. & S. Docket 774 anything regarding the extent of the movement from the Pittsburgh district say to non-affected territory?

A. The movement to non-affected territory from the Pittsburgh district was furnished in that case to some of the points.

Q. Wasn't it practically negligible?

A. It was not negligible. There was still some movement there.

Q. Was not the total movement from the Pittsburgh district to all this territory less than a million tons,—not only to the Pittsburgh, but all of Pennsylvania?

A. I do not recall the figure.

Q. Do you know as a fact whether there is any movement whatsoever from the Meyersdale district on the Western Maryland to any of this destination territory?

A. I have not seen any movement. I have not seen any cars, but my information is that there is.

Q. What is your authority for your information that there is a movement from the Meyersdale district on the Western Maryland to the West?

A. Mr. Wade B. Ellis, who used to be with the Davis Coal Company, and who used to be an associate of mine. I have made some inquiry and I understand that there is a movement from that district.

[fol. 1517] Q. But it is a very small movement?

A. I would not say how much it is.

Q. As a matter of fact, these joint through rates are nothing but paper rates?

A. No, sir. Those rates are open and any operator that wants to go west has an opportunity of going west.

Q. But they never do.

A. As I understand, they do.

By Mr. Scott:

Q. As a matter of fact, have you some clients up in that territory that want to go west and have been trying to go west?

A. Yes. We have just tried the Chaffe railroad case and those clients are going to ship west. We just got through trying it and had a favorable report for the Examiner,—both east and westbound. It is also from that source

that I know it. They are going to ship west as well as east.

Mr. Bell: That is all.

Examiner Hunter: Witness excused.

(Witness excused.)

Mr. Scott That completes the complainants' case, Mr. Examiner.

Examiner Hunter: We will take a recess then, until 2 [fol. 1518] o'clock this afternoon.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

[fol. 1519]

After Recess

The hearing was resumed at 2 o'clock p. m.

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Scott: I desire to offer as complainant's Exhibit No. 64 a statement showing Virginian Railway, New River Division, daily coal car allotment effective January 11, 1923. This statement is compiled from the latest bulletin issued by J. W. White, Superintendent, Virginian Railway Company, the bulletin being No. 48, effective January 11, 1923. The statement divides the allotment into joint mines and local mines, and also shows the allotment to mines located on lines operated under trackage arrangements; that is, on lines operated by the Chesapeake & Ohio from which the Virginian may draw tonnage, and also mines located on the Virginian Railway from which the Chesapeake & Ohio may draw tonnage.

The statement also shows the allotment to complainants' mines, which includes the Gulf Coal Company, the complainant in Docket 13832.

Examiner Hunter: The statement will be received as Exhibit 64.

(The statement referred to was thereupon received in evidence, marked "Complainant's Exhibit No. 64," and the same is forwarded herewith.)

Mr. Carmalt: Mr. Scott, it is understood, is it not, that the subdivision as between local mines and joint mines has been made by you, and is subject to check?

[fol. 1520] Mr. Scott: Oh, yes; that is subject to check.

Mr. Carmalt: And that is true also of the allotment to mines located on lines operated under trackage arrangements?

Mr. Scott: Yes. The whole statement is subject to check, of course.

Examiner Hunter: The allotment to complainants' mines covers the complainants in both cases?

Mr. Scott: In both cases; yes; that is correct.

Examiner Hunter: That finishes your case, Mr. Scott?

Mr. Scott: That finishes the complainant's case in chief.

Examiner Hunter: Defendants may proceed.

TESTIMONY ON BEHALF OF DEFENDANTS

Mr. Carmalt: I will call Mr. Hix.

CHARLES H. HIX was thereupon called as a witness on behalf of the defendants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Carmalt:

Q. Mr. Hix, will you give your full name and address to the reporter?

A. Charles H. Hix; Norfolk, Va.

Q. What is your official position, Mr. Hix?

A. Vice President in charge of operation, Virginian Railway.

Q. How long have you been with the Virginian Railway [fol. 1521] property?

A. Since February 1, 1919.

Q. And when you first came to the property it was in what capacity?

A. Federal Manager.

Q. Won't you state for the record somewhat of your railroad experience, in a very brief way?

A. I have been in the railroad business since 1881. I worked from the spring of 1881 to July, 1900, with the Norfolk & Western Railway.

Q. Was your employment in operating work with the Norfolk & Western?

A. I started in first as check clerk in the freight station, and worked my way to trainmaster through the various branches. I then left the Norfolk & Western in July, 1900, and went to the Seaboard Air Line as a trainmaster and I worked my way to vice president in charge of operation of that road; left there in October, 1921, and went to the Norfolk Southern as president.

Q. And thereafter you continued with the Norfolk Southern?

A. I left the Norfolk Southern and retired from railroad work in 1914 and went into private business. During the war I was drafted back as Federal Manager in charge at Hampton Roads terminals, and during the time that I was serving in that capacity the Virginian Railway became available [fol. 1522] cant, and that was added to my territory.

Q. That is to say, when you were appointed Federal Manager of the Virginian you were also left in charge of their Hampton Roads terminals?

A. Yes, sir.

Q. This morning, Mr. Hix, you heard the testimony of Mr. Tams in respect of certain operations on the Virginian Railway and the Chesapeake & Ohio. Referring first to the operations from Stone Coal Junction to Pemberton, will you state whether or not you conceive that to be a practicable route for interchange of joint traffic between the Virginian and the Chesapeake & Ohio in any large volume?

A. I would not.

Q. That, as Mr. Tams says, carries a grade of practically 2 per cent on the Virginian?

A. Two per cent from Loup Creek Junction to the top of the mountain near Sophia.

Q. And what is the contour of the Winding Gulf branch of the Virginian?

A. Very bad alignment and a very bad operating proposition.

Q. The operation as it is now conducted permits the handling of loads up the grade to Pemberton?

A. No, it permits of the handling of empties up the grade and loads down the grade, the way we operate it.

Q. And is that generally the character of the operation both on the Stone Coal branch and on the Winding Gulf?

[fol. 1523] A. Yes, sir. The construction was made that way for that purpose, for economic operation.

Q. And as to Fireco the same is true?

A. Practically the same; yes.

Q. So that in all of that region that is served through the Winding Gulf branch the grade runs with the load?

A. Yes, sir.

Q. But you say there are bad curvatures all the way on all of those branches?

A. Yes, sir.

Q. Mr. Tams described an interchange of considerable volume passing through Pemberton in a yard which consisted of two subyards of 60 cars capacity each. Is that yard so constructed as to permit of a considerable interchange of traffic such as is involved in this case?

A. Pemberton has today interchange tracks that will hold about 65 cars each—two of them. One will hold cars going to the C. & O. Railway, and one to receive cars coming from the C. & O. Railway. It is the terminus of a freight division between Princeton and Pemberton, where trains lay over, and the yard is very much crowded, and it would be very expensive to enlarge that yard, on account of the topography of the country, sufficient to take care of any large volume of business through there in interchange.

Q. The interchange that occurs there now is of what coal?

A. It is empties going to the C. & O. for loading back to the Virginian.

[fol. 1524] Q. So that what the Virginian receives there are loads from the mines on the Piney Branch of the Chesapeake & Ohio?

A. Yes, sir.

Q. And so far as the Virginian haul is concerned it is a downgrade haul with the load?

A. Yes, sir.

Q. There is not any delivery of coal there which the Virginian hauls up the Winding Gulf to Pemberton, is there?

A. No; none that is hauled up. We do make a delivery of coal from the Mead operation at Pemberton. That is a switch movement.

Q. That is purely a switch movement there?

A. Yes.

Q. Mr. Tams described in some detail the interchange facilities at Deepwater. Won't you state in your own way what that operation is now, and what the difficulties, if any, would be in enlarging that operation to care for a large tonnage of coal going west?

A. Deepwater is a contracted yard built right at the foot of a hill. My recollection is that the Virginian has three tracks and the C. & O. has two tracks and a passing track. A passing track is used for passing trains. I heard Mr. Tams' statement this morning in regard to the number of cars received through Deepwater, delivered to Deepwater; but he did not explain that the only way that [fol. 1525] the interchange is being handled properly now is because we use the gathering engine, or switch engine, as it were, from Page to move those loads from Deepwater promptly on delivery from the C. & O.; because we have to use those tracks to reswitch two passing trains each way a day at Deepwater.

Q. Passenger trains?

A. Two passenger trains. Our train No. 3 going to Charleston or Huntington has to be reversed at Deepwater. It goes in headed east, and it has to be switched to go west. Our No. 4 coming from the C. & O. to the Virginian has to be reversed at Deepwater, and it requires one or two tracks open to be able to do that successfully.

Q. You have to keep two tracks open in order to make that regular movement of the passenger train each way each day?

A. Yes, sir. Then we have a train No. 5 that runs from Princeton to Deepwater and turns there. It has to be reversed at Deepwater. We don't make up any freight trains at Deepwater. We move the loads as they come to us to Page, which is 8 miles farther away, where we have a very good yard, and there we switch these cars into trains and start them from there.

Q. Would you consider that the present facilities at Deepwater were sufficient to handle an additional tonnage

that would amount to twice as much in addition to what is now there?

[fol. 1526] A. The facilities would not accommodate it, nor would the track between Page and Deepwater accommodate it. The track is very bad alignment, a 12 to 14 degree reverse curve, and it would be practically impossible to put that tonnage over it successfully.

Q. Do you subscribe to the testimony that was given at the earlier hearing—I think by Mr. Gore—that the whole line of the Virginian between Deepwater and Mullens is practically of the alignment and character of a branch line rather than a mine line running track?

A. Well, a very considerable reconstruction of that line would be necessary to put heavy tonnage over it. The line was built, as I understand it, from branch lines put in for coal and lumber, and is not well built at all. We have 1½ degree curves, several of them, and very bad alignment, in that territory.

Q. You have a worse grade going over Clarks Gap than anything that is going in that direction?

A. Yes.

Q. How do you differentiate those two, Mr. Hix?

A. Clarks Gap is a double-track proposition. It is at the foot of a grade of 14 miles, where you can use pusher service to get the traffic over. The line between Mullens and Deepwater is what we call a broken grade; a heavy grade here, and 30 miles farther on another heavy grade, that would preclude the possibility of handling it with [fol. 1527] pusher engines successfully.

Q. You heard Mr. Gore's testimony in regard to—

A. (Interposing.) I think the Examiner wanted to ask me a question.

By Examiner Hunter:

Q. Just what do you mean by heavy traffic? By that do you mean the individual cars or the number of cars?

A. The density of traffic, increased density of traffic.

Q. The relationship is not clear to me between the density of traffic and the curvature and grades.

A. The greater the density of traffic the harder it is on your neck. A heavier density of traffic over a railroad is harder than a light density of traffic, on account of the increased number of trains.

Q. This branch now has very little traffic on it; that is, relatively?

A. Very little westbound traffic on it; the movement empty principally, and the loads eastbound. From Page we have little or no traffic except the merchandise freight that comes through Deepwater and the passing service.

Q. Would this additional tonnage give you a density that you think could not be handled over that line?

A. I do not think it could be handled under the present conditions. It would have to be revised—rebuilt—to do [fol. 1528] it successfully. I understand in reading over Mr. Gore's statement that he contemplated an increase of 2,000,000 tons per annum—wasn't it, Mr. Carmalt—westbound?

By Mr. Carmalt:

Q. That was the estimate that was made; and in the contemplation of a movement of a million or even two million tons westbound, would you consider that Mr. Gore's statement of the necessary additions to the line from Mullens to Deepwater was a statement of necessary additions?

A. Yes, sir.

Q. As an operating proposition you do not think that tonnage could be handled unless those or similar additions were made to the operation?

A. I think he was very modest. Since his statement was made I have had an estimate made to put in two hundred-car tracks at the east end of the Elmore yard, because it is congested, and it costs about \$110,000 to put in two tracks to hold a hundred cars each. That is due to the condition of the country there.

Q. That you are having done in order to facilitate the movement eastbound?

A. Yes, sir.

Q. Now, what, in your judgment, would be the result of handling the traffic both ways in that difficult country?

A. I think you would slow down your eastbound traffic very materially to undertake to handle westbound and east- [fol. 1529] bound at the same time.

Q. You think that that would increase not only the expense going west, but would increase the——

A. (Interposing.) The expense going east.

Q. The expense going east, on the tonnage that you are moving there?

A. Yes, sir.

Q. Would you anticipate that if that cross current of traffic were put in there that you would be able to maintain an operating ratio such as you have now?

A. No, sir.

Q. Are you able to estimate at all what difference that would make, say, in the turn-around of the cars from the mines to tidewater?

A. I have not made any figures on that. It depends entirely upon the amount of delay you would get in drilling out your westbound from your eastbound.

Q. You would not be able to make any figures on that until you had had the experience, I take it?

A. No.

Q. But from your experience in operating railroads you are convinced that it would make a substantial slowing down of the eastbound traffic?

A. Yes, sir.

Q. And the slowing down of the traffic means a proportional increase in the expense, I take it?

A. Very materially, yes. In explanation of that, of course when you slow down your traffic to such an extent that you get on overtime basis, your rate of handling business is increased. You pay one and one-half times on an overtime basis that you do straight time.

Q. So that not only is there a greater expense because of the longer time taken in doing it, but it increases in greater ratio than the increase in the length of time?

A. Yes.

Q. Mr. Hix, in this complaint 14454 a considerable attack appears to be centered upon the joint operating arrangements over the tracks where both railroads have trackage rights. Won't you state for the record, in your own way, what you think resulted in the matter of railroad economies from those operating arrangements?

A. I was not with the property when the arrangements were made, but I have read over very carefully the contract

covering the Stone Coal operation, and I imagine the rest of them are practically on the same basis.

Q. I am speaking of them more directly from an operating standpoint.

A. Well, I was going to tell you that the Stone Coal is a property over which the C. & O. Railway has a trackage right, but they preferred for economic reasons to have the [fol. 1531] Virginian Railway do this work on a switching charge basis, which was good for the C. & O. Railway and good for the Virginian Railway, in that it only put one company to operating on that joint track, and had no complications by joint operation. As an illustration, the C. & O. give us their coal cars in a string at Stone Coal Junction; we take them up the Stone Coal branch and place them above the tipple in strings. They are passed under the tipple and loaded as they pass under. They come out at the other end of the tipple track, coupled together. All we do is to take an assembling engine, pull them down and shove them into Stone Coal Junction. We have little or no switching to do with those cars, other than spot them, take them out and shove them back on the C. & O. Railroad.

Q. You are operating cars on the Virginian up that branch at the same time?

A. Yes, sir.

Q. Or during the same periods?

A. Yes.

Q. Do you conceive it to be an economy to the Virginian that it shall operate for the C. & O. up that branch?

A. I believe it is better for both companies.

Q. And it serves to reduce the unit costs of assembling?

A. Yes, sir.

Q. If you do all the work for both roads?

A. Yes, sir.

[fol. 1532] Q. And do you consider that there is a similar economy in the service that is performed for you by the Chesapeake & Ohio?

A. Yes, sir.

Q. Do you consider that arrangement under which, taking Stone Coal for example, you handle the cars for the C. & O. in solid blocks—do you consider that comparable with the service on the Virginian where you are loading coal in both directions, east and west?

A. No. If the Virginian Railway was loading cars that might be shipped east or west, they would be pulled out of Stone Coal branch to Elmore and drilled into tracks here and there; a car for the west here and a car for the east there. It might mean breaking every other coupling in the whole track of cars. With the C. & O. Railway we simply take the cars in solid drag from them; place them, and put them back in the solid track and deliver them to them.

By Examiner Hunter:

Q. Whereabouts is Elmore?

A. Elmore is at the foot of the grade on the main line ascending Clarks Gap. It is where the Winding Gulf starts from.

By Mr. Carmalt:

Q. And Elmore is now your principal assembling yard?

A. Elmore is our assembling yard, where we have round-houses and shops for maintaining road engines and pusher [fol. 1533] engines, and small pusher engines are put on to move the loads eastbound over Clarks Gap grade.

Q. Would that be a practicable yard to use for moving the westbound tonnage, too, or would you have to put in another yard?

A. We would have to build another yard.

Q. The work of switching is arranged under the contract so that the C. & O. pays you—

A. The C. & O. pay us \$6 a car for taking the empties from their connecting track at Stone Coal and placing them behind the tipple and giving them a load back.

Q. Do you get a similar charge made against you by the C. & O. for switching on the Piney Branch?

A. Yes, sir. That arrangement is reciprocal. They switch for us at several points.

Q. Then it does not make any difference between the two roads what the charge may be?

A. No. It will even itself up.

Q. The tonnage is somewhere nearly balanced, and it evens itself up?

A. Yes, sir.

Q. In going over Mr. Gore's statement is there any other statement, Mr. Hix, that you think ought to be put before the Commission to describe the effect upon the Virginian if joint rates were established to the west?

[fol. 1534] A. In reading over Mr. Gore's evidence I notice that he referred frequently to the 109-ton car which the Virginian had brought for movement of coal to tide-water. I did not think that that was a proper definition of the car. It is stamped "109 tons" on the body, but loaded and brought to carry 120 tons.

Q. That is, with the 10 per cent overload?

A. Yes. We refer to it invariably as a 120-ton car.

Q. And it normally carries 120 tons, loaded?

A. It normally carries 120 tons loaded. We had a record made last year of 835 of those cars that moved from loading point to Sewalls Point, the pier, and the average was 118 $\frac{2}{3}$ tons per car, for 855 cars.

Q. Now, with particular reference to that car, and to the Examiner's question regarding the handling of westbound tonnage, would it be a practicable operation to use those cars in any volume over the Deepwater extension of the Virginian?

A. We would hate very much to let one of those cars go west of Page. We do not believe that they can be successfully operated over the grade line between Page and Deepwater under load.

Q. And they would not be received by your connections for handling beyond?

A. We have only one connection that will accept a 120-ton car under load, and that is the Norfolk & Western for [fol. 1535] delivery on one of their delivery tracks at Norfolk. The Southern Railway, the Atlantic Coast Line, the Seaboard Air Line and the Norfolk Southern all decline to receive them. The C. & O. clearance will not permit them to go over the C. & O. line.

Q. If you complete the improvements that are now under way, of which Mr. Gore spoke, the electrification and the enlargement of the Sewalls Point pier, and various plans that have been made for the develop of the eastbound tonnage, do you anticipate that you will get the full value of those investments if a part of this tonnage is moved west?

A. No, sir.

Q. They are built, as I understand it, largely upon your recommendation and based on estimates that have been given of the expected growth of the tonnage eastbound?

A. We are building a new coal pier at Sewalls Point at a cost of three million and a quarter dollars, for the express purpose of expediting the shipment of coal offshore and coastwise. It is done for the purpose of helping the coal operators and helping the shipowners to avoid delay in coaling ships at Sewalls Point.

Q. And incidentally you anticipate that that avoiding of delay also give you a better service with your cars?

A. It will turn our cars faster and avoid the necessity of buying more cars.

[fol. 1536] Q. Similarly, are you looking for that kind of development from an electrification, if that is decided upon?

A. We have two of the principal electrical companies in the United States figuring on electrification of our line from Elmore to Princeton, first, and from Elmore to Roanoke as a second proposition, and their figures are expected to be available to us in the next ten or fifteen days.

Q. Your answer was not quite in line with the question that I put, Mr. Hix. Do you anticipate that that electrification, if made, will result in a quicker turn-around and a more economical handling of the eastbound tonnage?

A. It will result in quicker movement of freight and quicker turn-around and a greater volume of business than we now are able to handle.

Q. A greater volume over the Clark's Gap hill than otherwise?

A. Yes, sir. It is claimed by the companies, so far as they have gone, that we can maintain a speed of 18 miles an hour from Elmore to Roanoke, uphill and downhill, with these motors; and that being the case, that we should move a train from Elmore to Roanoke in the same time that we now move a train from Princeton to Roanoke, the distance being 135 miles from Elmore to Roanoke and 98 miles from Princeton to Roanoke. That would mean cutting out a division point at Princeton, and thereby curtailing the expense and delay of operating that short division point in there.

[fol. 1537] Q. Mr. Hix, what is, if you know, the average percentage of car supply to the rating of the mines served by the Virginian now?

A. About 28 per cent.

Q. And by this Exhibit 64 that Mr. Scott has just put in the record it is shown that the total allotment for the month of January on the Virginian is 1,822.8 cars.

A. Yes.

Q. Do you conceive that to be a measure of the capacity of the mines to produce coal?

A. I conceive it to be inaccurate from start to finish.

Q. What do you conceive to be the approximate total production that can be brought out by those mines at the present time?

A. I do not believe that the mines operating on the Virginian Railway can load over 850 cars a day, one day after another.

By Examiner Hunter:

Q. And in that you include the joint mines as well as the local?

A. Yes, sir; all of them. The heaviest loading that has ever been recorded on the Virginian Railway was 1,047 loads in one day, not long ago—a month or six weeks ago—and that was due to the fact that no empties had been placed at a great number of the mines for two or three days, and they had all of their mine cars full, and they made a spurt and loaded everything that was put in on Monday morning.

[fol. 1538] By Mr. Carmalt:

Q. And this 28 per cent car supply that is now being furnished is based on this allotment, is it not?

A. Yes, sir; based on that allotment.

Q. So that based on the real capacity of the mines to ship, there is at present on the Virginian somewhere between 60 and 70 per cent car supply?

A. About 75 per cent.

Q. As a matter of fact, has there ever been a period when there was a greater production of coal than in the last few months on the Virginian?

A. I think January was probably the heaviest producing month in the history of the Virginian.

Mr. Carmalt; I think that is all.

Cross-examination.

By Mr. Scott:

Q. On this particular day, Mr. Hix, to which you refer, when the Virginian experienced the heaviest loading in its history, do you recall what percentage of cars you delivered to the mines that day?

A. No; but it was on Monday, and we delivered between eleven and twelve hundred cars between Saturday and Monday. I think they carried over something less than a hundred cars empty that night.

Q. Have you any information as to the maximum amount of coal hauled eastbound over Clarks Gap in a single working day?

[fol. 1539] A. About 715 loads.

Q. I have before me, Mr. Hix, the Virginian car allotment which has been referred to, and I do not find any rating for the Loup Creek Colliery Company. That is a mine owned by the Virginian Railway and supplies the Virginian Railway with fuel, as I understand it.

A. Yes, sir.

Q. I presume that is the reason that is not shown in this rating sheet; at least I do not find it here.

Mr. Carmalt: That is a fact, Mr. Scott. Those cars are all assigned cars, and those mines are not rated.

Mr. Scott: I see. On the second sheet I see it refers to assigned cars. I presume that covers——

The Witness: Fuel cost only.

By Mr. Scott:

Q. I take it from the car allotment sheet, Mr. Hix, that you would have a very heavy tonnage from Page eastbound; from Page and coal-shipping stations intermediate between Page and Mullens you would have a very heavy tonnage?

A. Not a particularly heavy tonnage. You understand this fuel coal at Page is moved at our convenience, by local freight and otherwise. We load about thirty to thirty-five cars a day.

Q. Would not coal originating at such points as Summerlee, Lochgelly, Oakwood, and all coal moving eastbound

from the Kanawha, Glen Jean & Eastern mines, move east-
[fol. 1540] bound over this track between Oak Hill Junction and Mullens?

A. Yes, sir.

Q. Is it not a fact that that is a very substantial tonnage?

A. Yes; a very good tonnage, but not as heavy as the Winding Gulf.

Q. In any event, you have a heavy eastbound tonnage, as I understand it, and it is essential, of course, to keep that track in fairly good repair in order to handle that tonnage?

A. It is in very good repair. We have got it very well ballasted, laying it with hundred-pound rail.

Q. What is the particular feature in connection with the handling of the coal westbound that would differentiate from the handling of the coal eastbound; that is, as to the condition of the track?

A. No; it is the condition of the alignment and of the grades. You have broken grades of $1\frac{1}{2}$ and 1.7 per cent westbound, too far for pusher service, and the line from Page to Deepwater is not suitable for heavy tonnage.

Q. I notice on Exhibit 23, which is the profile of the Virginian Railway, there is a maximum grade east bound of 2.02 per cent between Deepwater and Silver Gap.

A. Yes.

Q. All the coal moving from Page eastbound would have to move up that grade, would it not?

A. Pusher grade.

[fol. 1541] Q. I also notice between Pax and Harper there is a maximum grade of 1.75 per cent.

A. Pushers.

Q. And all coal that is delivered to the Virginian Railway from the Kanawha, Glen Jean & Eastern Railroad would have to move up that grade, would it not?

A. Yes, sir.

By Mr. Carmalt:

Q. Did you say pusher service there, Mr. Hix?

A. We have pusher service at Silver Gap and at Harper also, unless the mine engine takes it up to the top of the hill.

By Mr. Scott:

Q. Would there be any particular obstacle to installing the pusher service on the other side of the hill there and pushing the coal to Deep Water in the opposite direction?

A. Yes. You look at the distance that you would have to push there, and the number of places, and you will see that there are three. One of them is about 16 miles.

Q. As a matter of fact, Mr. Hix, there are broken grades both ways between Deep Water and Elmore, are there not?

A. Yes, sir.

Q. And is it not a fact that there is a greater lift between Deep Water and Mullens eastbound than there is between Mullens and Deep Water westbound?

A. Yes; but it is not equally distributed westbound. You have got one place there, Mr. Scott, at Silver Gap where we [fol. 1542] have pusher service, and from Eccles or Surveyor to the top of the grade there is a short grade there where the mine engine put the loads up to that point, which enables us to get by with one pusher service. Now, take your grade westbound, starting at Mullens, and you have got about 13 miles of pusher service there to the tunnel under Slab Fork. Then you have got a 1.1 per cent grade from Surveyor to Harper. Then you have got a grade from Lively to Dothan and to Silver Gap.

Q. That is 1.1 per cent, is it not, Mr. Hix?

A. Yes, sir; 1.1.

Q. Is it not a fact, Mr. Hix, that those three grades that you have referred to, westbound, are much shorter than the grades eastbound?

A. Well, the one from Mullens is 13 miles.

Q. What is it from Deepwater to Silver Gap?

A. We don't push from Deep Water. We have no movement in between Page and Deepwater except switching movement and passenger trains. We push from Hamilton to Silver Gap, which is 7 miles. Beards Fork is worked by switch engines. There is no road service in there at all. Beards Fork is a branch on which the Loup Creek has an opening for fuel purposes.

Q. Is not the coal pushed from Beards Fork Junction there?

A. No, sir; it is brought in by switch engine.

[fol. 1543] Q. I understood you to state, Mr. Hix that the switching performed by the Chesapeake & Ohio Railway and the Virginian Railway on these jointly operated tracks was done on a reciprocal basis.

A. Yes, sir.

Q. Is it not a fact that there are different switching charges assessed at different points throughout the district?

A. Oh, yes. They are different in the conditions of the switching, too—the length of the switching.

Q. Have you made any calculation to ascertain whether, as a matter of fact, the switching is done on a reciprocal basis; that is to say, whether the charges paid by the C. & O. do approximately equal the charges paid by the Virginian to the C. & O.?

A. No; I have not personally made any; but we have a meeting called now to go over all switching charges, pro and con, to see whether or not each man is getting enough for the service performed.

Q. I would like to call your attention to a provision in the trackage agreement between the Chesapeake & Ohio and the Virginian Railway, which is Exhibit No. 35 in the Gulf case. I will identify it as paragraph 10 of Article IV on page 11 of the exhibit. That paragraph provides:

“In order to avoid duplication of switching at the various [fol. 1544] coal and coke operations, the mutual effort is to be made to work out plans by which one company will do all the switching at given places both for itself and for the other company, and this basis is to be worked out in a manner that will be fair and equitable to each of the parties hereto, and it is to be done by special agreement covering each particular case and at as near actual cost as can be determined, and no discrimination for or against either company is to be practiced by the other.”

Now, would not that paragraph, Mr. Hix, indicate that these agreements were not on a strictly reciprocal basis?

A. I think it would indicate that they were on a reciprocal basis.

Q. If the service was to be——

A. (Interposing.) Done at cost.

Q. —done at or near cost?

A. Yes; I think that would signify that that was reciprocal.

Q. Then the \$6 charge is not an arbitrary charge?

A. That is a reciprocal charge that they agreed to in connection with that switching up there. They thought that was fair and equitable, and cost.

Q. That is presumed to represent cost, is it not?

A. Presumed to represent cost; yes.

Q. Does not that rather contradict the idea, then, that it is on a reciprocal basis?

[fol. 1545] A. I would not so construe it. It would say it would confirm the idea that it was reciprocal; because they agree to switch for us—the Virginian—at some other place at practically cost. Wouldn't you call that reciprocal?

A. Reciprocal would be more or less arbitrary, would it not; the amount of the switching charge?

A. I would not give that definition to the word "reciprocal."

Q. Let me call your attention further to Complainant's Exhibit No. 10, which shows the amounts paid by the Chesapeake & Ohio to the Virginian Railway for switching during 1920, and also the amounts paid by the Virginian to the C. & O. for 1920. This statement indicates that during that year the Chesapeake & Ohio paid the Virginian \$47,000, and the Virginian paid the Chesapeake & Ohio \$77,000; substantially \$30,000 more paid by the Virginian Railway. Would not that further indicate to your mind that it is not a reciprocal proposition?

A. Not at all. They might have done \$30,000 more switching for us than we did for them.

Q. I will ask you this question as a practical railroad man: When reciprocal arrangements are entered into, is not that on the theory that the charges of the one company will about offset the other?

A. No, sir.

[fol. 1546] Q. It is not?

A. No, sir; it is not. It means this, Mr. Scott: that if you will agree to take my cars at A and switch them to B, I will agree to take your cars at A and switch them to H, at a price that we may agree upon as reasonable and fair. That is what I have termed reciprocal. You could not

possibly use it in connection with that, because there are no two cases on anybody's railroad that are identical.

Q. Then, as I understand, your statement now, which was your statement from the beginning—according to your understanding, of course—is that the switching charges are supposed to reflect at or near the cost of the service?

A. Yes, sir; that was the idea. Just let me explain what I mean by "reciprocal", so that the record will show clearly. The word "reciprocal" as I use it, and intend to use it, means that they would do for us similar work under similar conditions; not at the same price, but similar work.

Q. I didn't get your idea.

A. That is my definition of reciprocal as used in that connection.

Mr. Scott: I understood you to say that the charges of one would about offset the charges of the other, and therefore it was a reciprocal proposition. I did not correctly understand you. That is all, Mr. Hix.

[fol. 1547] Redirect examination.

By Mr. Carmalt:

Q. Mr. Hix, I call your attention to the fact that the figures on Exhibit 10 which Mr. Scott has referred to, indicate that for the period covered the Virginian received twelve thousand-odd cars from the Chesapeake & Ohio, for which it paid to the Chesapeake & Ohio some \$77,000, or a trifle over \$6 a car, and the Virginian turned over to the Chesapeake & Ohio some 7,000 cars, for which the Chesapeake & Ohio paid the Virginian \$47,000, or a trifle over \$6 a car. That would indicate to your mind that that switching arrangements had been worked out on a reciprocal basis, would it not?

A. Yes.

Q. In the territory between Deepwater and Silver Gap, or particularly that part of the haul between the foot of the grade and Silver Gap, where you use pusher service, is there any very large tonnage moving eastbound?

A. Yes. I think that takes in the Kanawha, Glen Jean & Eastern, in that territory.

Q. So that there is a substantial tonnage over which you have to use pusher service going eastbound?

A. Well, the word "substantial" does not signify very much there, Mr. Carmalt; but I would say there was 60 to 75 cars a day. The pusher is put on there for economy, because one engine can pull the tonnage, after it has gotten to the top of the grade, to the end of the run.

[fol. 1548] Q. What is that; a single-track line?

A. A single-track line; yes, sir.

Q. What would be the effect if you were to put on even an equal tonnage going westbound against the eastbound tonnage?

A. Then you would have to put on three sets of pusher engines at three different points, or run the pusher engines the full length of your division.

Q. And where it is necessary to have a pusher service in both directions it complicates the operation more than it would where there was not the necessity for pusher service?

A. Yes, sir.

Q. Just to keep the record clear, the Glen Jean connection is east of Silver Gap, is it not?

A. It is east of Silver Gap. I didn't recall.

Mr. Carmalt: That is all, I think.

Recross-examination.

Mr. Scott: I would like to ask Mr. Hix a question. Perhaps he is not familiar with the situation that I have in mind.

By Mr. Scott:

Q. Are you familiar with the location of the Beard Smokeless Coal Company?

A. No; I am not.

Mr. Scott: That is all, then. I wanted to ask you a question in regard to that company.

(Witness excused.)

[fol. 1549] Mr. Scott: Off the record.

(After discussion off the record:)

Mr. Carmalt: Just what is it you want, Mr. Scott?

Mr. Scott: Copy of the contract, if there is any contract, between the Chesapeake & Ohio Railway and the Virginian Railway in connection with the track serving the Beard Smokeless Coal Company mine.

Mr. Knight: Very well.

Mr. Carmalt: I assume that the record will be sufficiently taken care of if Mr. Adsit finds the facts to be as he recalls them—that each road has its tracks going in to that mine.

Mr. Scott: Yes.

Mr. Knight: My understanding is that the Beard Smokeless was a small mine, the operation of which has now been discontinued. It is my further information that this mine had an independent connection with the C. & O. tracks and with the Virginian tracks. If I find that the facts are otherwise, and if there is or was any contract between the C. & O. and Virginian relating to the service of this mine, we will file a copy of it.

CLARENCE W. HUNTINGTON was thereupon called as a witness on behalf of the defendants and, having been first duly sworn, testified as follows:

[fol. 1550] Direct examination.

By Mr. Knight:

Q. You have been on the stand before in this case, Mr. Huntington?

A. Yes, sir.

Q. Mr. Huntinton, please state whether in your opinion the Virginian should go into westbound coal business or be compelled to go into the westbound coal business at this time, and if not, why not.

A. In my opinion the Virginian should not go into the westbound coal business nor be compelled to go into the westbound business under circumstances and conditions of through routes and joint rates. I have this morning jotted down in lead pencil, hurriedly, a few of my thoughts on that subject, and if permissible I will read them.

In the first place, the road was conceived and built to haul coal to tidewater and to connections in the Southeast. There was and is no need for its tonnage to be diverted to

the west, with a short haul for the Virginian and correspondingly low earnings. This has been recognized by various authorities from time to time. It was made clear to the Interstate Commerce Commission in response to a letter of inquiry signed by Mr. Commissioner Daniels January 5, 1918, and was so viewed by the Railroad Administration during the period of Federal control.

To turn our coal west would give us about one-tenth the [fol. 1551] mileage haul as compared with our present tidewater movement, and a proportionate reduction in earnings. It would require a vast increase in our car supply to meet the absence of our cars from our line for 50 days or more on Western connections, compared with an actual performance of two round trips per month to tidewater. The efficiency of equipment thus being reduced is manifest.

To meet this situation would require heavy investment in additional cars to produce disproportionately small earnings for the Virginian and to burden its connections with tonnage of the same character as is produced on those lines in actual excess of their ability to handle it.

Expenditures made for additional sidings between mines and connections at Deepwater, increased interchange facilities at that point, and so forth, and so forth, required by the westbound movement of any considerable tonnage would be practically wasted when the Virginian builds, as it should and will build at an auspicious time, its own line toward the west, down Coal River and down the Guyan-dotte. When that time comes the Deepwater end of the line will be but a stub end branch. Such an extension toward the west is well defined in the plans of the Virginian, but it has been impracticable, under the financial conditions of the railroads generally, to proceed with the work heretofore, and is at this time.

[fol. 1552] Owing to the exceptional character of the Virginian's construction and service, it is not only practicable but economical for it to use equipment different from that generally used on other railroads. For example, our standard coal car is now one of 120 tons capacity, which is hauled to tidewater and dumped into vessels waiting at a pier especially designed and constructed for such cars; and to insure the prompter handling of an increasing tonnage at tidewater we are now beginning the construction of a second such coal pier at an expense of more than \$3,000,000. Such

cars, while adapted to the superior standards of construction of the Virginian, cannot be handled on many of the lines; but the Virginian should not be deprived of this peculiar advantage, and purchases of coal cars should be confined to the large capacity car.

The logic of this as to the Virginian was expressly recognized by the Director General of Railroads during the period of Federal control, when he gave permission for the purchase of large cars notwithstanding their lack of interchangeability with other lines.

More than three million dollars—I did not take the various separate construction jobs, it is probably nearer five—was expended in the double-tracking of Clarks Gap Mountain, which work from the very logic of the situation was continued during Federal control, but would be shown to [fol. 1553] have been wasteful were any considerable portion of our tonnage diverted from its natural destination at tidewater on our line for transshipment to New England and other coast destinations by vessel to an already fully supplied field of consumption in the Middle West.

Similarly, the \$3,000,00 now being expended to insure tidewater shippers adequate and ample pier capacity—I put it "would be squandered." It might be said, would be expended far in advance of any necessity for it.

The territory in the Middle West proposed to be fed by a few mines on the Virginian is already supplied with the same class of coals from the C. & O. and the Norfolk & Western, and with other coals of excellent quality from other parts of West Virginia, Western Pennsylvania, Ohio, Indiana, Kentucky, and three different fields in Illinois. It is a highly competitive territory, and far more than enough West Virginia smokeless coals to meet its demands can be supplied from the mines on railroads reaching it with their own rails or already established connections, and any tonnage from the Virginian would simply add to the operating difficulties of those lines and reduce their efficiency of service to their own mine operators.

In this connection, the Virginian will in due time build to a lake port, and in the meantime continually increase its facilities in the direction of tidewater terminals and South-[fol. 1554] eastern connections. Surveys for the electrification of 34 miles and probably 132 miles of the Virginian

from Mullens, W. Va., to Princeton, Va., or to Roanoke, Va., are approaching completion. This work will cost, according to the mileage chosen, from seven to fourteen million dollars, and is intended to meet the requirements of an eastward tonnage increasing in the next three or four years from seven million tons to twelve and a half million tons per annum. This project might be found of doubtful utility and advisability if a considerable tonnage were diverted from us, as is proposed in this case, and certainly under such circumstances the extension of the Virginian to the west would be indefinitely deferred because of such diversion of tonnage, producing grave decreases in earnings, would render it impossible for us to provide from earnings the necessary proportion of cash for such extensions, and would seriously impair our credit and threaten our ability to borrow money at all.

Those are a few thoughts that occurred to me this noon at luncheon time, as an expression of my own personal views upon the general question.

Q. You have testified, I believe, Mr. Huntington, as to your railroad experience when you were on the stand before?

A. I was qualified; yes, sir.

Q. And your experience has been very largely in the [fol. 1555] Middle West?

A. Yes, sir. I grew up in the Middle West, railroading.

Q. Mr. Huntington, it is a fact, is it not, that the Virginian has every year to find several millions of dollars out of earnings to apply to the improvement of its service for eastbound coal and its other present business?

A. Yes, sir.

Q. Do you see any prospects now or in the near future of the Virginian's being able out of its earnings to do more than meet the demands of its eastbound business?

A. I do not.

Q. Is there any prospect now or in the immediate future for the Virginian to supply the funds that the development of its eastbound business demands and to accumulate a fund that may be used to go westward over its own rails?

A. I should say not.

Mr. Knight: That is all, sir.

Cross-examination.

By Mr. Scott:

Q. Did I understand you to say, Mr. Huntington, that the Commission in some investigation made a finding that it was not practical for the Virginian coal to go west, or words to that effect?

A. I do not think I said that, Mr. Scott. I said that in 1918, in answer to the Commission's inquiry through Mr. Commissioner Daniels as to the requirements and financial [fol. 1556] needs of the railroads prior to the establishment of Federal control—shortly prior to that time, when the situation was in the hands of the Commission—it was made clear to the Commissioner and to the Commission, and on several occasions afterwards, on frequent opportunity, that the Virginian had a well and clearly defined mission to haul its smokeless coals from the West Virginia fields to tidewater; during the war largely for the navy and for the merchant marine, then under the control of the Government; before and since the war, for the New England states and other coastwise territory, which is increasing. Smokeless coals are finding their way into New York Harbor.

Q. Then, as I understand, you have no formal expression from the Commission or any of the commissioners to the effect that the Virginian Railway coal should not be required to go into the Western market?

A. No, I have nothing; but prior to my connection with the property, as I have heard, the Commission was convinced that there was no necessity for through routes and joint rates to the West.

Q. That is the Loup Creek Colliery Company case you have in mind, is it not?

A. I do not recall the style of the case.

Q. It has been referred to heretofore in the proceeding.

A. I remember there was such a case, but, as I say, it was prior to my connection with the property.

[fol. 1557] If I may be permitted to enlarge upon that, the Virginian road was begun—its construction was begun—at the westerly end. It was extended from its original condition of a little piece of a lumber road or a coal mine road of a very few miles in length, upon extravagant grades and curvature, expressly to the east; built to and for an

eastern business. The westerly end of it is extremely difficult of operation, because of its natural configuration, and there is a very considerable mileage of it that is not especially productive. The Winding Gulf branch produces more than the whole line from Mullens west; and whenever the Virginian is built, as it must needs some day be built, to the Ohio River, down the Coal River or down the Guyandotte River, as I have said, the connection at Deepwater will be a mere matter of form.

Q. Just how far, Mr. Huntington, have those plans progressed? That is, have your plans to build westward progressed far enough so that you can give these Virginian operators any hope of securing a western outlet over the Virginian Railway within any definite period of time?

A. They have so far progressed, Mr. Scott, that we have and own a right of way down the Guyandotte River to an intersection with the C. & O. in the Logan field, and we have various stretches of right of way down the Coal River. We have the line very thoroughly surveyed.

[fol. 1558] Q. How long has the Virginian owned those--

Mr. Knight: Let him finish his answer, Mr. Scott.

Mr. Scott: I thought he had finished. Excuse me.

The Witness: And it is only because of the conditions of the times, the war and the difficulties of the railroads, that we have not proceeded with development work along those lines.

Mr. Knight: You started, I believe, to say that you had a line very thoroughly surveyed, and then you were switched off.

The Witness: I say, we have lines thoroughly surveyed both down the Guyandotte and the Coal River.

By Mr. Knight:

Q. And down the Kanawha to the Ohio River?

A. And down to the Ohio River.

Q. Is it within your knowledge that we have had surveys made through Ohio and to the Lakes?

A. It is; and it is also my knowledge that we own land for a terminal.

By Mr. Scott:

Q. You speak of owning these various stretches of right of way. Is it not true that the Virginian has owned those properties for a good many years?

A. I could not say how many years. There have been several years of trials and tribulations for the railroads.

Mr. Scott: Which the coal shippers have experienced. [fol. 1559] That is all.

Mr. Knight: That is all.

(Witness excused.)

Mr. Carmalt: Mr. Knight, will you take the stand?

E. W. KNIGHT was thereupon called as a witness on behalf of the defendants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Carmalt:

Q. Mr. Knight, in your former testimony you gave your history with this property, and I do not know whether you stated whether you were familiar with the financing of the railroad pretty completely.

A. Yes; I am.

Q. Won't you state for the record somewhat the difficulties with the financing, particularly with reference to the mortgage on the present railroad?

A. All the Virginian Railway property, including after-acquired property, is subject to its so-called first mortgage of May 1, 1912. Its mortgage, covering after-acquired property, provides for the issuing of bonds against such after-acquired property. Under the mortgage bonds may be issued against the construction or acquisition of extensions of the main line to the amount of the cost thereof, not [fol. 1560] exceeding \$75,000 per mile. Against the construction or acquisition of branch lines and of second track bonds may be issued to the extent of the cost thereof, not exceeding \$50,000 per mile,

Those limits, which seemed reasonable in 1912, because they might be averaged over all miles of track at the time existing—that is, branch lines, second track and main lines respectively—are, of course, under the present scale of costs of construction, and any scale that we can foresee in the future, utterly inadequate. The Virginian has been compelled to change its plan of financing the construction or acquisition of future lines, that is, in any substantial amount.

Q. Let us first deal with the eastbound situation; the present plan of the railroad. The provisions of the mortgage require you to take substantial sums from income for any large improvements eastbound?

A. Yes. I should have said that; that while the extensions of the main line and extensions of branches may be financed under the mortgage at cost within the limits stated, on all other new construction work the company must furnish otherwise than through proceeds of bonds secured by the mortgage, 25 per cent in each case. That is, for general facilities, yards, shops, equipment—if we purchase any under the mortgage—and all that, the company must pay otherwise than with proceeds of bonds 25 [fol. 1561] per cent of the cost, and can only have issued under the mortgage bonds to the extent of 75 per cent of the cost.

Q. As I understand the situation, the extensions and development in the territory east, say, of Mullens, have been pretty well completed so far as the management foresees the development for the immediate future?

A. I should say they had. I think many of our branch lines to the east of the main line will be extended somewhat, but I do not think that any substantial construction is probable east of our main line in West Virginia.

Q. And the plan of extension of line, then, for the future necessarily looks to the west?

A. Looks to the west.

Q. Has it been considered that the present mortgage is adequate to deal with the situation looking to the west?

A. It has been definitely ascertained that the present mortgage is inadequate; that it is not possible any longer to build or buy railroads in West Virginia at \$75,000 per mile for main line construction or \$50,000 per mile for branches.

Q. And what has been done in order to meet that situation and to provide for the financing of the development in that territory?

A. A railroad company has been incorporated under the [fol. 1562] West Virginia laws, called originally the Virginia-Wyoming Railway Company, the name being subsequently changed to the Virginian & Western Railway Company, and on all its property now owned and all to be hereafter acquired has been placed a mortgage, which is an open mortgage; that is, the amount of bonds that may be issued under it is not limited. The Virginian has bound itself by executing the mortgage to guarantee all the bonds that may be issued thereunder, and has guaranteed a small amount of bonds, the issue of which has been authorized; or probably the guarantee has not been signed, but the Commission has authorized the issue so far of a million and a half of bonds under that mortgage, and the Virginian will guarantee those bonds when they are issued.

That mortgage provides that bonds may be issued under it for new construction to the amount of 90 per cent only of the cost. The railway company has to furnish 10 per cent of the cost of construction or acquisition of new lines.

Q. And there is no limitation there as to the maximum expenditure per mile of road?

A. No limitation as to maximum expenditure; and so with practically all the other things that may be bought or built under the mortgage except equipment. For equipment the railroad company must furnish 20 per cent of the [fol. 1563] cost otherwise than through the proceeds of bonds secured by the mortgage, and for all other work it may take down bonds to the extent of 90 per cent of the cost provided it has furnished 10 per cent otherwise than through the proceeds of such bonds.

Q. Is there anything else in connection with the financing and the difficulties of the immediate future that you think would throw light on this record?

A. I think not, sir.

Q. Now, Mr. Knight, the complaint in Docket 14,454 lays special stress upon the character of the leases and joint trackage arrangements that have been entered into between the Virginian and the C. & O. in the New River district, and you have stated on the record generally the history of those

arrangements. I do not know that it is very clear how they began and in what spirit the Virginian entered into the first of these arrangements. My understanding is that the Piney River and Paint Creek was the first extension that the Virginian undertook. Was that undertaken by the Virginian as a means of getting more tonnage moving to the east?

A. Yes. I have not recently reread my former testimony in the matter, and perhaps if there is no objection, I might briefly restate it.

Q. In doing that will you bear in mind the statements [fol. 1564] made by the Commission in the case of the Ridge Mining Company in Illinois? You are familiar with that case?

A. I have read the case, and read it not very many weeks ago. I think I realize the points that you want to cover.

Q. The point generally there is that the Commission has found that a railroad may extend its line and that it may be, to a certain extent, at least, the arbiter of how far it will extend, and the purpose of the extension.

A. Yes. The purpose of the lease of the Piney River & Paint Creek Railroad and the White Oak Railroad by the Virginian, and the trackage agreements between the Virginian and the C. & O., so far as the Virginian was concerned, were wholly in order to get tonnage to keep the line reasonably busy. So far as the C. & O. were concerned, I think it is safe to say that those agreements were made by the Chesapeake & Ohio because otherwise the Virginian would have paralleled existing lines of the Chesapeake & Ohio, and there seemed no use from any point of view in having two tracks; that is, in having a second track built where an existing one would do the work.

In 1909, when the Virginian Railroad was finished and formally—

Q. Let me ask you there whether or not in the negotiations it developed that you could have leased any of those lines unless you had a provision for extension of service by [fol. 1565] both railroads to those mines that were served by them.

A. Yes; we could have leased the Piney River & Paint Creek Railroad without giving the Chesapeake & Ohio access thereto.

As I started to say, in 1909, when the Virginian was formally placed in operation, and when its Winding Gulf branch was being built, it was apparent that notwithstanding the tonnage expected from the Winding Gulf branch the tracks then built and then under construction would not keep the Virginian Railroad busy nor for a long time to come furnish us the tonnage that was needed.

The White Oak Railroad had built to a connection with the Virginian in 1909 or 1910; I do not remember the exact date. The Kanawha, Glen Jean & Eastern about the same time, but a little bit later than the White Oak Railroad, was built to a connection with the Virginian. After the connections of those roads respectively were made with the Virginian, we made with them an arrangement for through routes and joint rates, publishing tariffs from stations on those roads respectively and giving the short-line roads a 10 per cent division of the Virginian rate, or the Virginian proportion of a rate, as the case might be.

The tonnage received from those roads, with the tonnage we had, still fell short of the business that we needed and wanted, and Mr. Raymond Du Puy, who was then President of the Virginian Railway, conceived the idea of leasing the [fol. 1566] Piney River & Paint Creek Railroad, and he negotiated the lease of that road under an agreement which provided that the Virginian should build to a connection with the Piney River & Paint Creek if it could not obtain trackage over the C. & O. to reach the Piney River & Paint Creek. My recollection is that there was no provision in that agreement for giving any of the Piney River & Paint Creek tonnage to the Chesapeake & Ohio or giving the Chesapeake & Ohio access to the Piney River & Paint Creek Railroad unless we obtained trackage rights. If we built to a connection with the Piney River & Paint Creek, it became our exclusive property for so long as the lease lasted.

That lease was negotiated, I think, early in the year 1912.

Q. You did not connect at that time with the Piney River & Paint Creek?

A. No. At that time our line ran, as it does now, to Pemberton. We should have had to build from Pemberton to the neighborhood of Beckley, in Raleigh County, in order to make the connection; I think some three or four miles.

We laid the matter then before the Chesapeake & Ohio people, showing them our lease and making a proposition

to them to let us reach this property by trackage, offering in that case to let them take an undivided half interest in the lease, and offering also to give them trackage over our [fol. 1567] lines in exchange for the trackage that we should get over theirs. The Chesapeake & Ohio very promptly accepted the proposition, preferring to have us reach the Piney River & Paint Creek by trackage, and to take an undivided half interest in the Piney River & Paint Creek lease, to having us parallel their line and take over the Piney River & Paint Creek property. When that agreement was made between the two railroad companies, the two railroad companies then made a proposition to the White Oak Railway Company to lease its property jointly, and a lease was then made, a joint lease with the two companies, expiring, I think, at the same time as the Piney River & Paint Creek lease.

In the trade with the C. & O. we got certain trackage rights. Those trackage rights were in every way equivalent to a construction of a line by us, except that my recollection is we did not have the right to handle all commodities offered those lines, but we had the right, wherever we had trackage from the Chesapeake & Ohio, to handle coal from every coal mine then on that trackage or that might thereafter be opened upon it, and similarly the Chesapeake & Ohio had the right, where it got trackage over our line, to handle coal from every mine opened or that might thereafter be opened upon it.

Q. And when the extension of the Virginian was made up [fol. 1568] to Stone Coal, that was done with equal care to see that each mine intermediate received the same service that was received by all the mines reached by the trackage?

A. At about the same time as the negotiations in respect to the Piney River & Paint Creek and the White Oak Railway and the trackage rights took place between the Chesapeake & Ohio and the Virginian, Mr. Stephens, then President of the Chesapeake & Ohio Railway, suggested that duplicate construction up the various tributaries of the Winding Gulf branch would be unnecessary and wasteful, and made a proposition that wherever either company intended to construct a branch up any of the tributaries of the Stone Coal, it should give the other company notice and a right either to contribute to the construction of the branch and

share in the ownership half and half, or to take trackage rights on certain terms. That proposition was accepted by the Virginian, and I believe all the construction of branch lines on the tributaries of Stone Coal has been done by the Virginian. In each case the Chesapeake & Ohio has been given notice before the construction was begun, and I believe in each case has elected to take trackage rights on the terms of the agreement on those branches; and the Chesapeake & Ohio and the Virginian have on each of those branches or tributaries of Stone Coal exactly the same rights. They are in the same situation as if each had an independent line [fol. 1569] up those branches respectively, except for the expense and the difficulty of operation.

Q. As I understand it, the Virginian had first built down the Winding Gulf to the Stone Coal connection, had they not?

A. The Virginian had built literally up the Winding Gulf.

Q. Up the Winding Gulf, yes.

A. The construction progressed from Mullens up the Winding Gulf, over the divide and down Soak Creek to Pemberton, and they started that construction before the Chesapeake & Ohio started its construction, I am quite sure, though I think it probable that the Chesapeake & Ohio was constructing its Winding Gulf branch during part of the time that the Virginian was building its Winding Gulf branch.

Q. The Chesapeake & Ohio built down the Winding Gulf at the same time that you were building up?

A. Yes, sir.

Q. And there had been that duplication of trackage on the Winding Gulf?

A. There had been that duplication of trackage to Pemberton from whatever the point is near the mouth of Stone Coal; I think it is Stone Coal Junction.

Q. And it was to prevent future extravagances of investment of that sort that this arrangement was entered into?

A. Yes. It was to prevent more particularly the unnecessary duplication of expense in the development of the [fol. 1570] Winding Gulf territory; that is, the tributaries to Winding Gulf.

Q. Is there anything further about these joint trackage arrangements that you think would clear the Commission's mind in regard to this record?

A. I think not, sir.

Mr. Carmalt: That is all.

Mr. Scott: No questions.

(Witness excused.)

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Carmalt: That is our case, Mr. Examiner.

Mr. Scott: Complainants have nothing further except that we would like to have the privilege of filing as an exhibit the Virginian coal car allotment effective January 11, 1923. We have only one copy, and if permissible I would like to retain this copy and have other copies made. This is the base exhibit, or the working sheet, you might call it, for Exhibit No. 64.

Examiner Hunter: Is there any objection?

Mr. Carmalt: There is no objection on our part.

Examiner Hunter: It may be filed, then, within ten days, as Exhibit 65.

(The statement referred to was thereupon received in evidence, to be hereafter filed and marked "Complainant's Exhibit No. 65.")

[fol. 1571] Examiner Hunter: Briefs will be due March 7th. The hearing is closed.

(Thereupon, at 4 o'clock p. m., the hearing of the above-entitled matter was closed.)

(Here follows Exhibit No. 61, map of New River Coal Territory, side folio page 1572)

MAPS

TOO

LARGE

FOR

FILMING

[fol. 1573]

EXHIBIT No. 62

Statement Showing Average Distances from All Mines
Taking the Same Rate as Pocahontas (Outer Crescent)
Compared with Average Distances from Mines on Vir-
ginian Railway and from Norfolk & Western Railways,
Outer Crescent Districts, to Destinations Shown.

Destinations	Average distance from		
	N. & W. Ry., Pocahontas, Tug River, Clinch Valley	Virginian Railway	*All mines in outer crescent
**Destination Group 1:			
Bay City, Mich.	582	568	552
Detroit, "	489	475	461
Ft. Wayne, Ind.	479	465	454
Grand Rapids, Mich.	597	583	577
Jackson, Mich.	502	488	474
Kalamazoo, Mich.	570	556	540
Lafayette, Ind.	551	537	516
Lima, Ohio	390	376	394
Mackinaw City, Mich.	791	787	760
Marion, Ind.	452	438	435
Muskegon, Mich.	675	661	636
South Bend, Ind.	560	546	515
Toledo, Ohio	431	417	402
Average	544	531	515
xDestination Group 2:			
Champaign, Ill.	589	575	574
Chicago, Ill.	605	591	575
Dayton, Ohio	364	350	356
Indianapolis, Ind.	436	422	439
Peoria, Ill.	681	667	653
St. Louis, Mo.	664	650	685
Terre Haute, Ind.	523	506	523
Vincennes, Ind.	511	497	555
Average	547	532	568

**Destinations in affected territory I. & S. Docket 774.

xDestinations in nonaffected territory I. & S. Docket 774.

*Short line mileage as shown in 46 I. C. C., at page 156.

Destinations	Average distance from		
	N. & W. Ry., Pocahontas, Tug River, Clinch Valley	Virginian Railway	*All mines in outer crescent
Composite Average Destination			
Groups 1 and 2	545	531	538

(Here follows Exhibit 63, map of Western Maryland Railway and connections, side folio page 1574)

[fol. 1575]

EXHIBIT No. 64

Statement Showing Virginian Railway, New River Division, Daily Coal-car Allotment Effective January 11, 1923

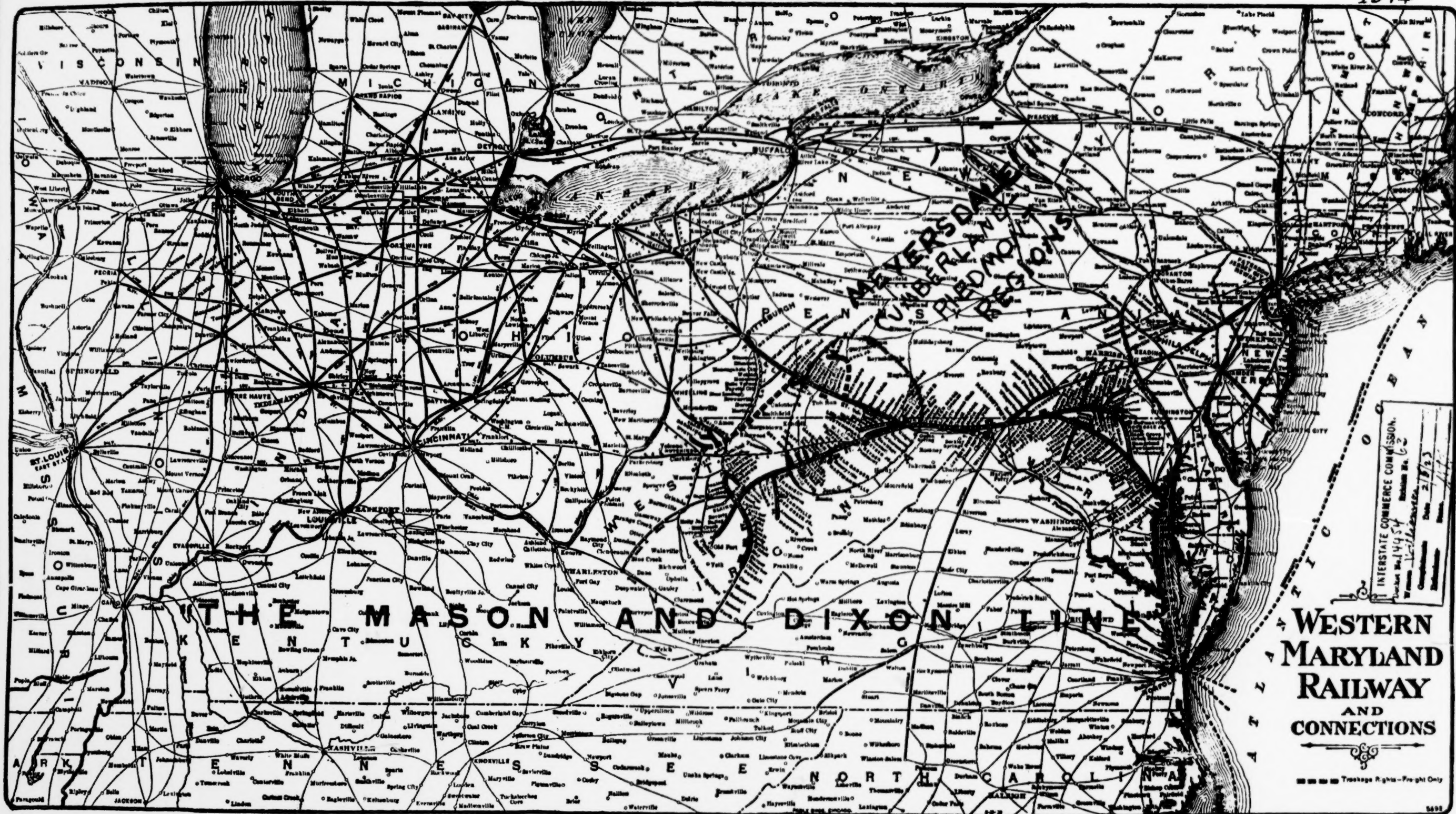
Joint Mines	1,008 3 Cars.
Local Mines	814 5 Cars.
Total Allotment	1,822 8 Cars.

Allotment to mines located on lines operated under trackage arrangements	555 7 Cars.
Allotment to Complainants' Mines	149 1 Cars.

Authority: Figures compiled from Bulletin 48 issued by J. W. White, Superintendent, Virginian Railway Company.

*Short line mileage as shown in 46 I. C. C., at page 156.

11/11/11 11:11:11





[fol. 1576]

EXHIBIT No. 65

The Virginian Railway Company, New River Division

Coal Car Allotment, Effective January 10, 1923, in
50-ton Cars

Mine	Cars
Loehgelly	16 6
Oakwood	22 4
Scarboro	32 1
Whipple	24 7
Price Hill	17 0
Nichol	18 9
Sun	31 4
Sunset	2 1
Derryhale	7 9
Dunloop	13 7
Cepede	11 1
Sugar Creek	11 7
Tamroy	16 9
Oswald	15 3
Kilsyth	24 9
Lee	19 9
Packs Branch	7 1
Fayral	4 0
Bob Coal Co.	1 2
Balwood	2 1
North Kilsyth #	4 0
Glenco #	13 3
Lick Fork	18 3
Ingram Branch	26 1
Long Branch #	34 4
Willis Branch #	12 1
Eccles #5	37 4
Eccles #6	17 0
Summit	16 5
Glen White	38 8
Neal	6 0
Slab Fork #1	39 4
Slab Fork #5	8 6
Otsego	13 7
Caloric	16 0

Mine	Feet
Trace Fork	16 5
Meade Poca	14 4
Itmann #17	31 2
Harty	20 1
Barker Creek #1	19 8
Alpoa	16 8
Koerner	1 9
Thermo Poca	17 4
Monticello	18 3
Flat Top	9 5
Coval #	13 4
Micajah Poca	8 9
Algonquin	3 0
America	22 5
Virginian Smo	18 4
Miller Poca	15 1
Wyoming	42 9
Iroquois	13 3
Devils Fork	11 5
East Gulf #3	53 2
East Gulf #5	41 7
Tams	46 9
Stotesbury	47 5
McAlpin	37 6
Woodbay	21 2
Big Stick	20 8
Hot Coal	27 9
Mistletoe	8 9
Winding Gulf	30 2
Affinity	22 2
Ragland	14 6
Pemberton Fuel	15 8
Lillybrook #4	10 9
Piney Creek	1 3
Phillips	6 1
Spencer Fork	8 4
Bacontown #1	4 8
Ralco	12 6
Douglas #2	20 6
Bacontown #2	8 1
Leekie #2	22 3

Mine	Cars
Lillybrook #2 #	14 0
Amigo	11 0
Minter	12 4
Rhodell	10 4
Tommy Creek	15 7
C. H. M. #1	17 9
Killarney	26 7
Vanwood	22 6
Besoco	11 0
Clyde	10 5
Laurel	7 6
Lego	14 4
Pickshin	14 8
L. & H. #3 #	6 7
Lillybrook #1 #	21 6
Princewick #	15 5
Crab Orchard	6 4
Raleigh #1	9 1
Raleigh #3	20 0
Raleigh #6	38 8
Mahscott	18 5
Beckley	16 1
Cranberry #1	25 3
Cranberry #2	19 8
Cranberry #3	31 2
City #2	3 0
White Stick	8
Total	1,822 8

J. W. White, Superintendent.

[cols. 1577 & 1578]

Summary

Rated mines.....	35,470.2	10,719.4	10,719.4	9,838.9	689.3	689.3
Assigned cars.....	790	790	790	790	.....	.....
Developing Mines...	58.6	58.6	58.6	58.6	.....	.....
Wagon Mines.....	3.0	3.0	3.0	3.0	.....	.....

Grand total.... 36,327.8 11,571.0 11,571.0 10,990.5 689.3 689.3

31.8% Car Supply.

J. W. White, Superintendent.

‡ Estimated as per Article K TD Circular 21.

[fol. 1579] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR REOPENING ARGUMENT BEFORE FULL COMMISSION AND POSTPONEMENT OF EFFECTIVE DATE OF ORDER—
March 28, 1925

Comes now the Virginian Railway Company, defendant in these proceedings, petitioning this Commission that the decision herein rendered by a majority of Division 3 under date of March 10, 1925, be reopened, that the cases be argued before the full Commission, and that in any case the effective date of the order be postponed.

This defendant contends that a case justifying the Commission in establishing through routes and joint rates has not been made herein; on the contrary, that these cases fall within the inhibition of Section 15 of the Act, which au-[fol. 1580] thorizes the establishment of such routes and rates only when the Commission shall first find such routes and rates "necessary or desirable in the public interest;" and that the majority report avowedly excludes from its consideration the fundamental question of the public interest.

The Virginian Railway was conceived and built to furnish primarily transportation from theretofore undeveloped coal fields in southern West Virginia to tidewater, though there was in contemplation from the beginning, and is now, the completion, or extension otherwise, of the railway to the Great Lakes and other Western outlets, as and when the necessity and opportunity therefor shall arise.

It was the Virginian policy to thoroughly develop the first unit or half of its projected railroad before starting the second, to render to its shippers the best possible service from the beginning, and to have the first unit contribute to the cost of the second and help carry it through the development period rather than to prolong its construction and development periods by a too ambitious program with consequent drain on the resources of its projectors, probable skimping of its equipment and other facilities, and inferior service to the shippers who had the confidence and enterprise to locate their operations on its lines, and on whose success the success of the railway depended. The complainants and every other shipper locating upon its

line did so with complete understanding of conditions and the expectation that the Virginian would indefinitely continue to handle only east bound coal. Until shortly before the institution of the first of these cases the coal shippers on the Virginian unanimously approved its policy of [fol. 1581] handling coal only to tidewater and other eastern markets, and when these cases were heard a majority in number of its coal shippers, handling more than half its coal tonnage, were still in accord with that policy and opposed to the contention of the complainants herein.

The Virginian has been developed as conceived into a most effective agency for the transportation of coal. It has spent large sums of money in the construction, equipment and perfection of its transportation machine, and, with the exception of a brief war and post-war period has rendered unsurpassed, perhaps unequalled, service to its coal shippers, and that portion of the public whose needs it serves. The record herein makes it clear that if a substantial portion of the Virginian coal tonnage is diverted from the flow of commerce which it was primarily intended to serve there will result a severe depletion of its presently sufficient car supply, a great impairment of its highly effective service to the eastern seaboard and the Southeast, a serious drain upon its finances, and in general a jeopardizing of its prosperity and its life as an independent carrier. And the record not only fails to show that the through routes and joint rates proposed to be established are "necessary or desirable in the public interest," but it abundantly justifies the conclusion of Commissioner Cox to the contrary. The case is one of importance, differing in all essentials from the cases upon which the majority of Division 3 relies for its conclusions, and is of such fundamental public interest, as well as so vitally affecting the Virginian itself, as to warrant the consideration of the issues involved by the whole Commission.

The specific grounds for the requests herein made and [fol. 1582] the errors, as we see them, of the majority of Division 3 in the consideration of the record follow:

I

The majority erred in the application on sheet 3 of the previous decisions of the Commission there cited.

The cases cited by Division 3 in each instance involved the arbitrary action of carriers in adjusting their rates,

regardless of the public interest, in a manner to impede or stifle the movement of commodities in a given direction, and with the purpose of protecting certain shippers, in most cases those on the lines of the principal carrier defendant against further competition. No such case is here presented. Whether the judgment of the Virginian officers and the bulk of its coal shippers as to what was most to the advantage of the coal shippers was right or wrong, the record leaves no room for doubt that the Railway sought to do only what was believed to be the best interest of such shippers as well as itself.

This defendant denies that the Commission may establish through routes and joint rates, as stated by the majority of Division 3 in the final paragraph on sheet 3, "irrespective" of the public interest. On the contrary the question of the public interest is a matter of primary consideration and of first importance.

Cardiff Coal Co. v. C., M. & St. P. Ry. Co. et al., 13 I. C. C. 460, and *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, both were cases where the line-haul carrier sought arbitrarily to cancel joint rates in order to protect itself and the shippers on its own line against the competition of off-line shippers; in each the principal defendant [fol. 1583] was participating in rates to the markets which complainants sought to reach, which rates would be in all respects reasonable from the shipping points of complainants measured by any ordinary test of reasonable rates; and furthermore, in each the principal defendants were the line-haul carriers, and the complaining shippers had no other outlet for their wares. In this respect these two cases have many points in common with the short-line cases referred to by the Commission in another part of the report and hereinafter referred to.

In *Chamber of Commerce of Milwaukee v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 460, 466, the Commission said:

"The rate must be reasonable with respect to the service actually performed."

In *Rates on Plaster and Gypsum Rock*, 27 I. C. C., 67, 70, the Commission said:

"The chief respondent admits that its purpose in taking steps to withdraw the present through rates was a purely

selfish one, and it has not even attempted to show the reasonableness of the higher charges that it proposes to exact on this traffic."

All these cases differ fundamentally from the instant case in which the Virginian contends, and its contention was supported at the hearing by a majority in number and volume of its coal shippers, that its refusal to enter into through routes and joint rates to the West is in the interest of its coal shippers, including the complainants, and the rest of the public, as well as itself, and it does not participate [fol. 1584] in a single rate which Division 3 uses in its comparisons on the question of discrimination and prejudice.

The majority in its report ignores the series of cases upon which the Virginian relies, and which can not be squared with the findings of the report. The theory of law upon which the Virginian rate structure presently available for movement to the West is based is that stated by the Commission in *Tidewater Paper Mills Co. v. B. T. R. R. Co.*, 80 I. C. C., 493, where, at page 497, it is stated:

"the general provision of paragraph (4), Section 1, that the carriers shall establish through routes and reasonable rates applicable thereto is subordinated to the specific provision of Section 15 for the establishment of through routes and joint rates."

And again:

"that certain of the carriers were participants in joint rates on wood pulp from other points to Fresh Pond Junction, Harlem River, and Brooklyn does not prove that the combination rates were unreasonable."

The principles there announced have been followed by the Commission in other cases stated particularly in the exceptions filed by this defendant to the report of the Examiner, pp. 29 to 32, and are thus discussed in the dissenting opinion of Commissioner Cox, which is here for convenience set out:

Cox, Commissioner, dissenting:

The findings of the majority will compel the Virginian to [fol. 1585] meet by joint rates the westbound New River

district rates of the Chesapeake & Ohio. The majority find that, irrespective of considerations of public interest, complainants are entitled to move their coal to any market at reasonable nonprejudicial rates. They further find that under the circumstances of this case relative reasonableness rather than intrinsic reasonableness becomes the important thing to be considered and other criteria fall into the background. I agree that complainants are entitled to reasonable and nonprejudicial rates, but I do not believe that under the circumstances and conditions surrounding this traffic the failure to extend the highly competitive New River basis to mines served exclusively by the Virginian is either unreasonable or unduly prejudicial. Rates like the Outer Crescent group rates on coal made in practical disregard of distance and other transportation conditions that ordinarily enter into the making of rates are, I believe, justified only on the ground of public interest. In my opinion the extension of the group rates to the Virginian mines is not necessary or desirable in the public interest.

The Virginian begins immediately west of the boundary line of the New River district and extends eastward to tidewater. It was built and developed to haul coal eastward, particularly to tidewater. Its maximum haul in that direction is about 450 miles. Its construction cost was high but seems to be justified because for about 340 miles the maximum grade is only two-tenths of one per cent. The majority of the Virginian's 9,500 coal cars remain under its control and are returned to the mines in from 10 to 16 days. In short, on eastbound coal the Virginian is in a position to render maximum efficient service at rates not excessive. Ordinarily it has been efficient in service and its rate from the New River district to tidewater, 444 miles, is \$2.52 per long ton. On westbound coal the average haul would [fol. 1586] be but 64.7 miles, mainly expensive assembling service, and this haul is 22 miles greater than the average distance from the Chesapeake & Ohio mines to the same point.

The Chesapeake & Ohio is differently situated. It extends through the New River and other coal districts and with its own or affiliated lines it reaches such important gateways and points as Cincinnati, Louisville, Chicago, Toledo, and Washington. Its lines are normal routes for

both eastbound and westbound coal and to practically all of official territory it secures a very substantial line haul. The extent and direction of its lines naturally make it one of the main factors in the westbound movement of coal under the highly competitive Crescent adjustment of rates.

In determining whether joint rates are necessary and desirable in the public interest we must consider the interests of the consuming public, the shippers and the carriers. I am unable to see that the consuming public in general will be benefited. Any movement to the west will divert a corresponding amount from a normal efficient route to the east, and the tonnage westbound would merely displace other coal more naturally tributary to those markets and be insufficient in volume to affect prices. The shippers on the Virginian would have additional markets but it is difficult to understand why they should be more desirable or advantageous under ordinary circumstances than the present markets. Whatever advantage there might be in such additional markets to certain shippers appears to me to be neutralized to the disadvantage of both consumers and shippers in the less efficient service which the Virginian would render with its present facilities. Every car of coal moved westward would be equivalent to removing at least two and one-half similar cars from the eastbound service. In practice, if not in theory, a trunk line carrier originating a substantial volume of coal supplies the cars. In his separate ex-[fol. 1587] pression in *Ohio-Michigan Coal Cases*, 80 F. C. C. 663, in which I joined, Commissioner Potter said:

Additional transportation can be obtained only by increased facilities or the increased use of existing facilities. Increased facilities involve large expenditures and their use involves increased expense for handling and because of congestion, etc. Increased efficiency without increased equipment is the primary need. Increased efficiency in the use of equipment can be accomplished by making the equipment handle more tons per unit of time—day, month, or year.

To move 2,000,000 tons of coal westbound the Virginian claims that 5,000 additional cars costing \$15,000,000 would be required. Whatever the expense, I question whether it would not be largely wastage if the equipment is to be de-

voted to an uneconomical long-haul service not more necessary than that asked in this complaint. The Virginian would be compelled to rearrange its tracks within the district at considerable expense to accommodate the western movement; a cross current of traffic would be created which would increase assembling costs on all its coal, and on a substantial volume of tonnage it would be deprived of the line haul whereby it earns the funds necessary to maintain its present efficiency. In so far as the Chesapeake & Ohio is concerned, west of Huntington that defendant already moves, according to the testimony of one of its witnesses, its trains as close together as safety will permit. I am unable to agree that rates from mines on the Virginian in the New River district are unreasonable and unduly prejudicial to the extent that they exceed rates from mines on the Chesapeake & Ohio within that district.

[fol. 1588]

II

The majority has erred in its finding on the question of prejudice.

The complainants seek the establishment of the same rates from Virginian mines as are published by the Chesapeake & Ohio from mines in its New River District. The Chesapeake & Ohio maintains a basis of rates from its New River District on what is known to the Commission as the "Outer Crescent," fully described in Bituminous Coal to C. F. A. Territory, 46 I. C. C., 66. These rates apply from mines on the Chesapeake & Ohio and its short-line connections, including a negligible movement from Carolina, Clinchfield & Ohio mines, and they are made in competition with the Pocahontas, Tug River, Clinch Valley No. 1, and Clinch Valley No. 2 districts of the Norfolk & Western.

The rates are made on a strictly competitive basis. Of them the Commission said in Bituminous Coal to C. F. A. Territory, supra:

"In the light of all the evidence, the present rates from the Crescent to affected territory must, considering the circumstances and conditions of transportation and the value of the service, be regarded as below the level at which reasonable maximum rates might be fixed."

Before the Commission can enter a discrimination order as a violation of Section 3, it must find that this defendant

has violated that section. The Virginian railway does not articulate in any manner in joint rates to the West, nor publish joint rates on the Crescent basis to any destination.

The Virginian can not be held responsible for unduly low [fol. 1589] rates on coal published by the Norfolk & Western and Chesapeake & Ohio unless it participates in some fashion in the division of such low rates and the transportation which earns them. As said by the Supreme Court in *Central Railroad Co. of New Jersey v. United States*, 257 U. S., 247, at page 259:

"If this were not so, the legality or illegality of a carrier's practice would depend, not on its own act, but on the acts of its connecting carriers. If that rule should prevail, only uniformity in local privileges and practices, or the cancellation of all joint rates, could afford to carriers the assurance that they were not in some way violating the provisions of section 3. What Congress sought to prevent by that section, as originally enacted, was not differences between localities in transportation rates, facilities, and privileges, but unjust discrimination between them by the same carrier or carriers. Neither the Transportation Act, 1920, nor any earlier amendatory legislation, has changed, in this respect, the purpose or scope of section 3."

And again (p. 256):

"But the question presented here is whether the discrimination found can be held in law to be attributable to the appellants, and whether they can be required to cancel existing joint rates unless it is removed. No finding made by the Commission can prevent the review of such questions."

Dealing with a finding of the Commission respecting group rates, the Supreme Court, in *United States v. Illinois C. R. Co.*, 263 U. S., 515, said (p. 522):

"A carrier is entitled to initiate rates, and, in this connection, to adopt such policy of rate making as to it seems wise."

[fol. 1590] The Supreme Court in that case was dealing with the Illinois Central Railroad as defendant, under whose rate policy the blanket rate was established. That

carrier was in a weaker position in defending the rate structure there involved than is the Chesapeake & Ohio in the instant case. There it lay within the power of the Illinois Central to remove the discrimination by extending its blanket to the short-line connection, but the Supreme Court said (p. 524):

"To bring a difference in rates within the prohibition of section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions. But the mere fact that the Knoxo rate is inherently reasonable, and that the rate from competing points is not shown to be unreasonably low, does not establish that the discrimination is just. Both rates may lie within the zone of reasonableness and yet result in undue prejudice."

It is to be noted that the opposition to the inclusion of short-line points in the blanket that was raised by the short line in that case went only to the question of the division of the rate, and in the separate case filed by the short line the only additional fact considered was that the combination rate to the short-line points had no distinction from the joint rates that were included within the blanket. In the last case cited the Commission's discrimination order requiring the extension of the blanket rate was sustained by the Supreme Court because, and only because, the transportation conditions applying to the movement from points [fol. 1591] on the originating carrier did not differ from the transportation conditions obtaining elsewhere in the blanket sufficiently to justify the difference in rates.

In the instant case the report of the Commission shows:

1. That distance alone considered, the mines of the Virginian Railway are at a disadvantage of more than 22 miles.
2. That the route of movement over the Virginian involves loaded hauls over very steep grades on the line of the Virginian between Mullens and Deepwater.
3. That the grades on Chesapeake & Ohio branch lines, while equaling or exceeding in severity the grades on the

main line of the Virginian, run for the most part with the load and not against it, as would be the case on Virginian traffic.

4. That the extension of the group rates to points on the Virginian will deplete the car supply of both carriers, to the injury of shippers on both lines, including the complainants.

It should be added that the record shows that in west-bound coal movement between Elmore and Deepwater there would be five miles of 1.65 per cent grade between Hotchkiss and Jenny Gap, requiring pusher service; five miles further on, between Surveyor and Harper, six miles of 1.11 per cent grade, likewise requiring pusher service; and eleven miles further on, between Lively and Silver Gap, five and one-half miles of 1.1 per cent grade, also requiring pusher service; three pusher grades with an aggregate lift of 1,165 feet as against one pusher grade with a lift of 1,125 feet from Elmore to Clarks Gap; that in six miles between Page [fol. 1592] and Deepwater there are 23 curves in excess of 10 degrees, the maximum being 16 degrees; and that it would be necessary to revise this line at an enormous expenditure of money—more than a million dollars—to make it safe for the economic operation of heavy tonnage trains.

There is no evidence in the record or in the testimony recited by the majority to justify the finding that:

“The record will not warrant a conclusion that the difference in operating conditions from mines to Deepwater between the haul over the Virginian and that over the branch lines and independent short-line connections of the C. & O. is in and of itself sufficient to warrant a higher level of rates from complainants’ mines.”

The doubt in the minds of the majority in this finding is expressed in the following sentence, reading:

“Moreover, the Virginian may, if it elects, effect interchange with the C. & O. at Pemberton and thus obviate the haul from Mullens to Deepwater.”

The profile map in the record shows that the lift from Mullens to Sophia on the line to Pemberton to be practically 900 feet in a distance of 21 miles with a ruling grade over

two stretches of about 2 miles each of 2 per cent and with grades elsewhere over considerable distances of 1.50 per cent, 1.70 per cent, etc.

III

The majority of Division 3 erred in its finding that rates exceeding the Chesapeake & Ohio New River district rates [fol. 1593] would be unreasonable rates to apply from mines on the Virginian Railway to interstate destinations.

To what extent, if any, this conclusion may be based upon a misapplication of and reliance upon a statement of counsel made before testimony was introduced, having reference not at all to the question of rates, as the context shows, but quoted in the report, we cannot say, but this does not in any way relieve the Commission from the obligation of determining the issues in the case upon the facts presented by the evidence in the record.

The statement of counsel, quoted on sheet 3 of the report, is as follows:

"The coal rates to the west over the Virginian line as they now exist are rates that reach every station, including the junction points of Pemberton and Deepwater, but are made on the Virginian Railway's local distance tariffs. They are not merely unreasonable rates—I will say frankly to your Honor that they are impossible rates."

As stated before, it was made in an opening statement before testimony was introduced, had reference to the local rates of the Virginian which are that carrier's local distance tariffs, obviously "impossible" for use as components in joint rates from a single district, since they run from \$1.14 to \$2.52 per ton, and were made only to cover sporadic movements of occasional carloads of coal. The reference to these rates as "impossible" was in the same sense as the assertion of counsel for complainants that any rates from Virginian mines made arbitraries over the district rates of the Chesapeake & Ohio would, as a practical matter, move no coal in quantities to the western markets and would be [fol. 1594] just as impossible as the present local distance rates of the Virginian in the normal market.

The statement in the report on sheet 6:

"Counsel for the Virginian admits that complainants' mines cannot compete with other mines in the district on account of the 'impossible' rates."

is less misleading than the use of it earlier in the report. As here used, understanding that the competition referred to is in the western market, the statement of counsel is entirely accurate, but neither the one use of the statement nor the other in the report is justification to the Commission for the finding that through rates to the West from Virginian mines in any degree higher than the district rates of the Chesapeake & Ohio are either prejudicial or unreasonable.

Certainly none of the facts introduced by the Virginian and cited by the Commission in its report support the proposition that the through rates from Virginian mines are now unreasonable considered in and of themselves.

In two of the case relied upon by the majority of Division 3 to support its finding that the shipper is entitled to reasonable rates regardless of the public interest the Commission approved a basis of rates that was made arbitrarily higher than the group rates of the line-haul carrier:

Wichita Board of Trade v. A., T. & S. F. Ry. Co.,
25 I. C. C., 625.

Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C.,
671.

[fol. 1595] The adjustment authorized in the latter case was again prescribed in Coal from W. Va. Mines, 59 I. C. C., 486.

Another case involving a rate structure of similar character to that here involved was Rates from Walsenburg Coal Field, 26 I. C. C., 85, wherein the Commission recognized the propriety of off-line rate differentials over the district rates of the line-haul carrier.

Considering the rates and service involved in the instant case the record justifies the conclusion under Section 1 of the Act, even without reference to Section 15, that rates be made from Virginian mines with greater differentials over the New River district rates than were prescribed in the cases last above cited.

Nor can these cases be laid aside or explained away by the later decisions of the Commission respecting short lines connecting with the C. & O. in the Kanawha and New River districts: Coal from Sewell Valley R. R. Stations, 58 I. C. C., 261; McKell Coal & Coke Co. v. C. & O. Ry. Co., 78 I. C. C., 227; Nelson Fuel Co. v. C. & O. Ry. Co., 83 I. C. C., 737, and the affirmation of the latter case on rehearing on February 9, 1925, — I. C. C., —.

In each of these cases the primary consideration was that of prejudice by the C. & O. against mines served by [fol. 1596] the short lines. These mines had no other outlet to market than over the C. & O., and the Commission held in each case that the Chesapeake & Ohio was under obligation to extend the district rates to such mines and participate in the division thereof only to the extent that the cost of the service from mine to market did not exceed that borne by the C. & O. on the average from the mines on its own rails within the group.

Here the situation is wholly reversed. The Virginian furnishes transportation from mine to market in the East on the district basis, and the markets in the East are shown to be adequate to absorb all of the coal produced on the Virginian. The cost of the service is shown to exceed by large amounts the cost developed on the record in any of these short-line cases, and, inferentially, at least, in excess of the average on the Chesapeake & Ohio, particularly when the duplication of capital costs is taken into consideration.

These facts with respect to cost have been wholly misconceived by the majority of Division 3. They were introduced in evidence here not with a view to a present fixing of the divisions of the joint rates proposed but to demonstrate to the Commission that if and when the C. & O. New River District rate, including the costs of the Virginian, is spread over the mines on the Virginian, the resulting revenues would be insufficient to cover the costs of both carriers. Any divisions of the rates that might be prescribed would fall far short of providing adequate compensation for the service as a whole. If the Commission shall wait to consider these facts until the rates have been made effective the damage will have been done to the carriers and the situation will be more difficult of correc-

[fol. 1597] tion because the business of the mines will have been built up on the faith of the new rates.

The New River District rates of the C. & O. are less than reasonable rates for the service from the mines now served by the Chesapeake & Ohio. No competitive rates on coal in the Eastern territory have been so universally condemned by this Commission.

In Bituminous Coal to C. F. A. Territory, 46 I. C. C., 66, the Commission said of them:

"in practical, if not absolute disregard of distance, and all transportation conditions that ordinarily are taken into consideration in the making of rates."

They were considered again, and again held to be less than reasonable maximum rates in Ohio-Michigan Coal Cases, 80 I. C. C., 663, and the Examiner's report in I. C. C. Docket No. 15007 and Sub-Nos., Pittsburgh Coal Producers' Association et al. v. Ashland Coal & Iron Railway Company et al. (commonly referred to as the Lake Cargo Coal Case), further characterizes those of the rates here involved that cover the lake cargo coal in similar language.

The Commission is not authorized, even under Section 1 of the Act, and "irrespective" of considerations of public interest, to establish rates of this character.

IV

If through routes and joint rates via the Virginian and Chesapeake & Ohio, as sought herein, are to be established, whether on the basis directed by the report of the majority [fol. 1598] of Division 3 or on some other basis to be later prescribed, in any case the effective date of the order should be postponed for a time sufficient to enable provision to be made for the equipment necessary to serve the new routes, and for the division of the joint rates and the responsibility for supplying the necessary equipment (since these two matters are inseparably connected), to be agreed upon by the carriers or, failing such agreement, prescribed by the Commission.

We respectfully submit that the majority of Division 3 failed to appreciate the tremendous importance of the matter of car supply and the respective contributions thereto of the carriers principally interested, as is evidenced by the

quotation on sheet 6 of the report from the opinion in the case of Pittsburgh Terminal R. R. Co. v. Director General, 63 I. C. C., 179, 182, as follows:

"The obligation to furnish cars rests on all carriers parties to joint rates. *Huerfano Coal Co. v. C. & S. E. R. R. Co.*, 28 I. C. C., 502. The conditions prevailing prior to and at the time of hearing were abnormal and are not present today. Moreover, we have control over car distribution in the public interest. If there is otherwise a sufficient reason for the establishment of joint rates from complainants' mines, we are not persuaded that such rates should be withheld through fear that defendants' car supply may be depleted."

In each of the cases cited the number of cars required to handle the traffic was relatively very small. Each of the originating carriers in those cases was a short line. In the instant case there must be promptly supplied to carry the traffic from 2,500 (complainants' estimate) to 5,000 (Virginia estimate) open-top cars, representing a cost of seven and one-half million to fifteen million dollars. Further, the Virginian contends, if the through routes and joint rates are to be established, that while it is primarily responsible to its shippers for their car supply, its obligation to furnish cars for the business of the new routes as between it and the other parties to such routes and rates will be fulfilled when it has furnished that proportion of cars that its division of the joint rates bear to the joint rates. It is the contention of the Chesapeake & Ohio, on the other hand, that the obligation to furnish cars must be wholly borne by the Virginian.

The gravity of the situation will be apparent when it is realized that the Virginian now has, since the delivery of certain additional equipment, mentioned in the record but not then delivered, in all 9,635 coal cars, of four classes with capacities of 52½, 55, 70 and 109 tons respectively, and with an aggregate capacity of 634,000 tons, the equivalent of 12,000 cars of 52½ tons each.

If the new routes are to be opened immediately, with divisions of rates and responsibility for supply of equipment unsettled, with the Virginian bound by law and the order of the Commission to supply the equipment required there-

for, without obligations by agreement or order of the Commission on the part of any other carrier to contribute thereto, the situation of the Virginian and its shippers, including the complainants, will be nothing short of calamitous. For the Virginian alone to meet the demands of the new routes would require from 20% to 40% of its open-top equipment with consequent prejudice to the east-bound business, for which it has now no more than the necessary [fol. 1600] equipment under normal conditions. It could not of course fully supply the demands of the new routes and thus prejudice its business to tide and into the Southeast, and practically instead of affording its shippers a 100 per cent car supply for the business they and the railroad have together developed and efficiently cared for, it would be reduced to affording from 60% to 80% of a car supply for a volume of business considerably less in the aggregate under normal conditions than the present east-bound business of Virginian shippers under like conditions, since it takes two and one-half times as many cars to handle a given amount of tonnage to the Western market as it does to handle the same tonnage to the East. And this condition must continue until, by agreement or order of the Commission, divisions of rates and contributions to equipment are determined. Assuming the Virginian could in addition to its already heavy capital commitments mentioned in the record to find \$7,500,000 to \$15,000,000 for the necessary equipment for the new routes, it would not be justified in doing so in view of the repeated decisions of the Commission as to the duty of all parties to joint rates to contribute to the supply of the equipment necessary to earn them. If the proposed through routes and rates are to become effective the Virginian must as promptly as practicable purchase some new equipment for the purpose, but every consideration forbids any unnecessary expenditure on its part at this time.

Further, the establishment of the proposed routes would involve a great deal of work and expense in the improvement of tracks, the enlargement and rearrangement of other facilities and the supply of additional motive power, as well as the acquisition of additional cars. The order which has [fols. 1601 & 1602] been entered becomes effective by its terms on May 20, 1925. Obviously, by that time no prog-

ress toward effective preparation for the changes in and rearrangement of physical, operating and economic conditions can be made other than perhaps to procure assurance of the necessary capital, and with consideration alike of the best interests of shippers and carriers the new routes should not be opened until at least the equipment for the business expected shall be definitely assured, the improvement of other facilities started, and the requisite capital provided.

Wherefore, The Virginian Railway Company prays:

1. That these consolated proceedings may be reopened for further argument before the full Commission, and that pending such argument the order of Division 3 be set aside.
2. That even though the Commission shall deny the request for reopening these proceedings, it shall postpone the effective date of such order for such time as shall seem to it reasonable.

Respectfully submitted.

The Virginian Railway Company by E. W. Knight,
Williams, Loyall & Tunstall, James W. Carmalt,
Attorneys.

1116 Investment Building, Washington, D. C., March, 28, 1925.

[fol. 1603] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

REPLY TO PETITION FOR REOPENING—April 7, 1925

The reply of complainants in the above-entitled proceedings to defendant's petition for reopening, argument before full Commission and postponement of effective date of order, respectfully represents:

[fol. 1604]

I

Statement

The complaint in Docket 13832 was filed on May 15, 1922, and the complaint in Docket No. 14454 in November, 1922. Hearings were held in November, 1922, and February,

1923. The proposed report of the Examiner was served April 30, 1924, and the case submitted to Division 3 on oral argument June 30, 1924.

The complaint in these proceedings have for their object the removal of what, for all practical purposes, amounts to an absolute rate wall against coal shipments at the western termini of the Virginian Railway. The Virginian Railway transports in excess of 6,000,000 tons of originating coal tonnage annually. When consideration is given to the fact that under the present rate adjustments this large tonnage of coal is practically confined to the Virginian Tidewater market, a clearer understanding may be had of the anxiety with which complainants view the present petition of the Virginian Railway which has for its object the prolonging of an obvious rate maladjustment that must in the end give way to the demands of justice.

Defendant in its petition for reopening sets forth three alleged errors in the Commission's decision. These errors may be briefly summarized as follows:

(1) That the majority erred in the application on sheet 3 of the previous decisions there cited;

(2) That the majority erred in its finding on the question of prejudice; and

(3) That the majority erred in its finding that rates exceeding the Chesapeake & Ohio New River district rates [fol. 1605] would be unreasonable rates to apply from mines on the Virginian Railway to interstate destinations.

It would seem entirely unnecessary at this time to attempt a full reply to defendant's argument in support of these alleged errors, the same points having been exhaustively considered in the briefs heretofore filed by the parties and in the oral argument before Division 3. In this reply we will merely endeavor to point out briefly the fallacies in defendant's position.

II

There Can Be Found no Sanction in the Law for the Virginian Railway's Policy of Restricting the Movement of Coal from Its Local Mines to Eastern Destinations

Paragraph 5, Section 1 of the Act to Regulate Commerce, provides:

"All charges made for any service rendered, or to be rendered, in the transportation of * * * property * * * shall be just and reasonable, and every unjust and unreasonable charge for such service, or any part thereof, is prohibited and declared to be unlawful."

The simple question to be determined here is whether these plain provisions of Section 1 give to the shipper an absolute right to a just and reasonable rate, or merely a qualified right controlled by some collateral consideration.

The rates on coal from complainants' mines to western [fol. 1606] destinations are in excess of the rates contemporaneously applied from mines served by the Chesapeake & Ohio Railway in the New River District in amounts ranging from \$1.13 to \$2.52 per ton. Most of complainants' mines are practically surrounded by mines served either locally by the Chesapeake & Ohio Railway or jointly by that Company and the Virginian Railway. As pointed out in the decision of the majority, the rates from complainants' mines to western destinations are, according to defendant's own admission, unreasonable rates. The holding of the majority goes no further than to condemn the admittedly unjust and unreasonable rates complained of and to prescribe in lieu thereof just and reasonable rates. Certainly, it should not require a reopening of the case and an argument before the full Commission to determine that there was no abuse of authority by the majority of Division 3 in the mere granting of just and reasonable rates to these complainants.

If our understanding of defendant's position is correct, it is that the right of a shipper to a just and reasonable rate is but a qualified right, and that before the authority of the Commission may be invoked to condemn an unjust and unreasonable rate there must first be made a definite show-

ing of the public interest in the correction of the unreasonable rate complained of. Defendant contends that complainants have failed to make that necessary showing of public interest.

We believe that if it were necessary to do so, the Commission might readily conclude from the evidence of record that there would be a direct benefit to the public by the establishment of the reasonable rates prayed for. But, however this may be, it can unquestionably be said that it [fol. 1607] is in the public interest that the policy of the Congress as expressed in the provisions of paragraph 5 of Section 1, above quoted, should be respected.

In support of its argument that complainants are not entitled to just and reasonable rates to western destinations in the absence of a definite showing that the public will be benefited thereby, defendant refers to a series of cases decided by the Commission involving the construction of the provisions of Section 15 relating to the establishment of through routes and joint rates, and asserts that these cases cannot be squared with the report of the majority in the present case. The principal case relied upon by defendant is *Tidewater Paper Mills Co. vs. B. T. R. R. Co.*, 80 I. C. C. 493, 497.

The *Tidewater Paper Mills Company Case* is not similar to the present case in any particular. In the present case, complainants are absolutely deprived of just and reasonable rates to western destinations. It is impossible for complainants to move a pound of coal to a western destination, via any route, at a rate other than an admittedly unreasonable rate. In the *Tidewater Paper Mills Company Case*, it was shown that between the points of origin and destinations involved through routes and joint rates were in effect via the "normal route" which were conceded by the complainant therein to be just and reasonable. The prayer of the complaint was that the Commission should establish through routes and joint rates over an additional and different route. The complainant apparently relied upon the provisions of paragraph 4, Section 1, which provides that carrier shall establish through routes and reasonable rates applicable thereto. Under the circumstances appearing of record, the Commission held [fol. 1608] that the general provision of paragraph 4, Sec-

tion 1, must be subordinated to the specific provision of Section 15, and that Section 15 had not been invoked by complainant. In other words, the Commission said in effect to the complainant: "You have been given by the carriers a just and reasonable rate via the normal route of movement, and we see no occasion on this record for requiring the carriers to open up an additional and different route of movement between the same points of origin and destination." The situation there disclosed is the very antithesis of the situation in the present case.

The underlying fallacy of defendant's position is its assumed right to dictate the direction of the movement of the coal tonnage originating on its line. There can be but one theory for such a contention, namely, that the Virginian Railway may be treated separately and apart from any other railroad or system of transportation. Similar theories by other railroads have been considered by the Commission in numerous cases, and the position of the Commission with respect thereto is plainly indicated by the following language of Mr. Commissioner Lane in *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C. 39 (at p. 46):

"Our railroads are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep these routes open and in operation, furnish the necessary facilities for transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other."

Further, in the same case, Mr. Commissioner Lane stated as follows (at p. 48):

[fol. 1609] "The Illinois Central sought to protect 'its own people,' but in contemplation of the law there is no such thing as local traffic which enjoys rights superior to through traffic. There can be no discrimination or preference in favor of the Illinois coal buyer as against the Missouri buyer, although one may be local to the Illinois Central and the other may be on the line of connecting carrier. That all carriers have not fully recognized this principle is not to be wondered at, inasmuch as it is, as

shown by the history of the act to regulate commerce, a matter of evolution, for it was not until the amendment of 1910 that the principle was announced in its fulness."

Since the decision in the above case, the "evolution" spoken of by Mr. Commissioner Lane has gone onward at such a pace that at the present time it seems surprising that there should remain an important common carrier railroad with the temerity to contend that the public has no interest in its endeavor to exclude itself as a part of the national transportation system.

In this same connection see *Cardiff Coal Co. vs. C. M. & St. P. Ry. et al.*, 13 I. C. C. 460, 466-7; *Star Grain & Lumber Co. vs. A. T. & S. F. Ry. Co.*, 14 I. C. C. 364, 367-8; *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.*, 15 I. C. C. 460, 464-5; *Wichita Board of Trade vs. A. T. & S. F. Ry. Co.*, 25 I. C. C. 625, 631-2; *Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co.*, 26 I. C. C. 53, 58-9; *Rates on Plaster and Gypsum Rock*, 27 I. C. C. 67, 69-70; *Lumber to C. M. & St. P. Ry Stations*, 38 I. C. C. 587, 588-9; and *Coal from W. Va. Mines*, 59 I. C. C. 486, 487.

[fol. 1610]

III

The Finding of the Majority as to Prejudice

We understand defendant to contend that the finding of the Commission in the present case with respect to prejudice is erroneous for the reason that the Virginian does not participate in any manner in joint rates to the west, nor publish joint rates on the Outer Crescent basis to any destination. The principal authority cited by defendant in support of its position is *Central Railroad Company of New Jersey vs. United States*, 257 U. S., 247. It seems clear that the holding of the Supreme Court in that case can have no bearing here. In that case, the question involved local practices of certain carriers, parties to joint through rates, respecting the privilege of creosoting-in-transit. The Supreme Court pointed out (at p. 255) that under the rules of the Commission governing the making, filing and publishing of tariffs, privileges like creosoting-in-transit were treated as a local matter to the railroad on which the transit point was situated. Further, that the local carrier

determined whether the privilege should be granted or withheld, and that if granted the local carrier determined the conditions, and that these were set forth in the local tariff. In other words, although through routes with joint rates were established by concurrent action of several carriers, the transit privilege might be granted by a carrier without the consent of and without consulting the connecting carriers. The Court held that under the circumstances the case was not remediable under Section 3 of the Act to Regulate Commerce. The Court further clearly pointed out the distinction [fol. 1611] between an alleged discrimination with respect to purely local practices, such as creosoting-in-transit, and such discriminations as might arise by reason of lower joint through rates accorded to one locality than to other localities similarly situated. As to discriminations of the latter kind, it was unmistakably pointed out by the Court that Section 3 of the Act might be invoked for their correction, and that all carriers parties to such discriminating joint through rates would properly be subject to the orders of the Commission.

It is true that in the Creosoting Case the Supreme Court referred to joint rates as causing discrimination in violation of Section 3, while in the present case there are no joint rates in effect from complainants' mines to western destinations. That this distinction is of no consequence is clearly indicated by the decision of the Supreme Court in *United States vs. Illinois Central Railroad Company*, 263 U. S. 515. The precise point was raised by the short line carrier involved in that case, and in answer to the contention made by that carrier that it was not a party to any joint through rates and therefore could not be guilty of inflicting undue prejudice, Mr. Justice Brandeis, speaking for the Court, stated (at p. 527):

"In No. 38, where the short line alone seeks to set aside the Commission's order, this additional fact requires mention. The rate to the short line points is not a joint rate, but a combination of the trunk line rate to the junction and the short line local rate. The distinction is without legal significance in this connection. A through route was established; and the transportation is performed as the result of this arrangement between the carriers, express

[fol. 1612] or implied. Undue prejudice may be inflicted as effectively by a through rate which is a combination of locals, as by a joint through rate. The power of the Commission to remove the unjust discrimination exists in both classes of cases."

In further support of its contention that there was no undue prejudice shown, defendant refers to the adverse grades that would be encountered in handling coal westbound over its main line between Elmore and Deepwater. We fail to see how defendants can attach much importance to this showing as large quantities of coal are hauled eastbound over the same line and the adverse grades encountered in the eastbound movement are certainly as severe, if not more so, than the grades in the western direction. For instance, the Virginian profile shows that eastbound there is an upgrade of about 11 miles between Liberty and Harper, 5 miles of which is 1.75 per cent. Between Surveyor and Jennys Gap there are 5 miles of 1.6 per cent grade against the loads. Neither these grades nor the grades encountered in the western movement, as pointed out by defendant, compare with the 13 miles of grade between Elmore and Clarks Gap, which is over 2 per cent.

Moreover, the profile maps of the branch lines of the C. & O. Railway in the New River District, which were offered in the record, show that the grades encountered on numerous of the branches of that road equal or exceed in severity the grades on the main line of the Virginian between Mullins and Deepwater. Approximately one-half of the mines served by the Virginian Railroad are also served jointly by the Chesapeake & Ohio Railway. This [fol. 1613] joint service, except in a very few instances, is accomplished through joint operating agreements whereby the Virginian performs the service on certain portions of its line within the New River District both for itself and the C. & O. Railway, and vice versa, the C. & O. Railway performs a joint service on certain portions of its lines within the District. From these so-called joint mines served by the Virginian Railway, the physical difficulties encountered in handling westbound movements are in many instances more severe than would be encountered in handling the westbound tonnage from complainants' mines.

At page 14 of defendant's petition, comment is made on

the majority's statement that the Virginian may, if it elects, effect interchange with the C. & O. at Pemberton, and it is pointed out by defendants that from Mullins to Sofia on the line to Pemberton, the lift is practically 900 feet in a distance of 21 miles, with a ruling grade over two stretches of about 2 miles each of 2 per cent, and with grades elsewhere over considerable distances of 1.5 per cent and 1.7 per cent. This point entirely loses itself when it is considered that over a parallel track offering even greater difficulties of operation, the Chesapeake & Ohio hauls on its way to the western markets great quantities of coal produced at mines on the Virginian Railway's Stone Coal Branch. In 1923, which are our latest immediate available figures, the Chesapeake & Ohio Railway handled over its Winding Gulf Branch between Stone Coal Junction and Pemberton 549,550 tons of coal produced at mines on the Virginian Railway's Stone Coal Branch. We submit the majority's finding of undue prejudice was inevitable under the circumstances.

[fol. 1614]

IV

The Finding of the Majority as to Unreasonableness

It should not be necessary to argue that rates from complainants' mines which exceed the rates from surrounding mines on traffic moving under almost identical circumstances and conditions in amounts ranging from \$1.13 to \$2.52 a ton are unjust and unreasonable. The majority decision merely reaches this obvious conclusion and proceeds to apply the usual and ordinary transportation standards in establishing just and reasonable rates.

It is contended by defendants that the rates applying from the Outer Crescent are on a subnormal basis, and cannot therefore properly be accepted as a standard for fixing the rates from complainants' mines. In the face of the notoriously prosperous condition of the three principal carriers serving the Outer Crescent mines, namely the C. & O. Railway, Norfolk & Western Railway and L. & N. Railway, it should require more than the categorical assertion to establish the fact that the Outer Crescent rates from the mines served by these roads are unduly low.

But regardless of defendant's claim that the Outer Crescent rates are on a subnormal basis, the decision of the

majority correctly points out that "under the circumstances of this case relative reasonableness rather than intrinsic reasonableness becomes the important thing to be considered, and other criteria, such as ton-mile earnings, fall into the background." With approximately one-half of the mines served by the Virginian Railway enjoying the New River District rates to western destinations, and with [fol. 1615] these mines practically surrounding and in some cases within a stone's throw of the less favored mines, it is impossible to see how upon a reargument before the full Commission a conclusion could be reached differing from that of the majority of Division 3.

V

The Effective Date of the Order Herein Should Not Be Postponed

Defendant bases its application for postponement of the effective date of the order on the time required to effect an agreement respecting a division of the joint through rate and the responsibility for supplying the necessary equipment. We submit that there is nothing so intricate about the filing of the rates contemplated by the Commission's order that should require an extension of the effective date beyond the time now fixed. Certainly, under present conditions the apprehensions expressed by the Virginian Railway with respect to the car situation are more fanciful than real, and there seems no valid reason for denying complainants the much needed relief pending the final settlement of a carrier problem that would seem to have little immediate importance.*

The question of divisions is likewise one which presents no demand for immediate final settlement. In any event, the Commission has many times held that shippers have no concern in this question. If the carriers are unable to reach a satisfactory agreement as to divisions, there [fol. 1616] is no reason why they may not enter into a temporary arrangement and proceed with further negotia-

*Information Bulletin No. 181, American Railway Association Car Service Division, dated April 2, 1925, shows that for the period ending March 15, 1925, there was an average daily surplus of 151,828 coal cars, and an entire absence of shortage in coal cars.

tions, and failing in that submit the matter to the Commission for adjudication. The Virginian Railway can fully protect itself in case of failure to reach a final agreement before the effective date of the rates by filing its complaint with the Commission. The prayer of defendant's petition is in effect that the Commission should withhold the District rates from complainants until such time as the carriers may reach a satisfactory agreement as to divisions and the supply of equipment, or in failing of such agreement, until the Commission may finally adjudicate these matters. The request is a novel one, and if granted would work a severe and wholly unjustified hardship on complainants.

Conclusion

There have been certain abnormal periods when the eastern markets for the coal produced at local Virginian Railway mines were sufficient. Those conditions, however, have not existed in recent years, and the present condition of the coal industry is such there is little reason to believe that such conditions will recur in the years to come. It should not be necessary to argue the point that unless the mines served locally by the Virginian Railway are allowed access to the same markets and on the same rates as neighboring mines served locally by the Chesapeake & Ohio Railway, or jointly by that Company and the Virginian Railway, they cannot hope to survive. We believe that the comparative originating coal tonnage figures on file with the Commission covering the Chesapeake & Ohio, Norfolk & Western and Virginian Railroads correctly indicate the effect which [fol. 1617] the absence of westbound District rates is having on the local Virginian Railway mines. These figures for 1923 and 1924 are as follows:

Chesapeake & Ohio Railway

1923: 561,593 Carloads—30,981,266 Net Tons.
1924: 686,347 Carloads—36,819,735 Net Tons.

Norfolk & Western Railroad

1923: 449,871 Carloads—26,854,994 Net Tons.
1924: 503,303 Carloads—30,872,611 Net Tons.

Virginian Railway

1923: 107,514 Carloads—6,794,465 Net Tons.

1924: 88,000 Carloads—6,335,989 Net Tons.

From the above figures, it will be noted that the originating coal tonnage from the Chesapeake & Ohio Railway in 1924 increased approximately 19 per cent over 1923, and on the Norfolk & Western approximately 15 per cent 1924 over 1923, while the Virginian Railroad originating coal tonnage decreased approximately 7 per cent during the same period. There would seem no other reasonable explanation for this showing than that the absence of westbound rates is throttling the local Virginian Railway mines.

It is respectfully submitted that the petition for reopening, argument before full Commission and postponement of effective date of order should be denied.

Respectfully submitted, James, Williamson & Scott,
806-8 Westory Building, Washington, D. C., on
behalf of Complainants.

Washington, D. C., April 7, 1925.

[fols. 1618 & 1619] BEFORE INTERSTATE COMMERCE COM-
MISSION

[Title omitted]

ORDER DENYING PETITION FOR REOPENING—April 14, 1924

Upon further consideration of the records in the above-entitled proceedings, and of petition, filed on behalf of defendant, The Virginian Railway Company, for reopening argument before the whole Commission, and postponement of the effective date of the order entered therein:

It is ordered, that the said petition be, and it is hereby, denied.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 1620] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR REOPENING AND MODIFICATION OF ORDER—
April 27, 1925

Comes now The Virginian Railway Company, defendant in the above-entitled proceedings, and without waiving its rights in its pending petition for a postponement of these proceedings in order to permit a review thereof in the courts, prays that the Commission shall reopen these proceedings for further consideration in the light of new facts pertaining to the controversy herein and for modification of the Commission's order, and as grounds therefor shows:

I

Since the order herein was entered negotiations have been concluded between the Norfolk & Western Railway [fol. 1621] Company and the Virginian Railway Company whereby, subject to the approval of the stockholders of the two companies, respectively (which petitioner believes is certain), and the Commission, the Norfolk & Western has agreed to lease the Virginian Railway for 999 years.

II

Pending the approval of the lease, arrangements have been entered into between the Norfolk & Western and the Virginian whereby rates from Virginian mines will be published on the New River District basis to the West via Matoaka, West Va., and the Norfolk & Western, to become effective August 1, 1925.

III

That rates via Matoaka and the Norfolk & Western were stated at the hearing in these proceedings to be satisfactory to the complainant by Witness Williamson, principal witness, traffic expert and representative of the complainants, as shown on page 255 of the record in Docket No. 13,832:

We would have no objection to that. What we want is the western market. If the Virginian and the Norfolk &

Western would get together and establish joint through rates on the New River district basis, via Matoaka and the Norfolk & Western and serve those through routes and give the benefit of the car supply of the Norfolk & Western and its connections, there is no objection to that. We would join you in a petition if you want to make a petition to that effect.

[fol. 1622]

IV

That the present interchange facilities between the Chesapeake & Ohio and the Virginian at Deepwater are inadequate for any substantial addition to the present traffic interchange; that to enlarge these facilities so as to handle the traffic estimated by the complainants to move through this gateway would require the acquisition of right of way and a very large amount of grading and track laying; that the present interchange facilities would not absorb sufficient additional traffic to an extent greater than 15 cars per day; that the present interchange facilities at Matoaka will accommodate an interchange of 50 cars per day; that the enlargement of the facilities at Deepwater would take much longer than will the enlargement of the facilities at Matoaka; that plans have been completed and right of way is now available for the enlargement of the facilities at Matoaka; that no plans have been made or right of way secured for the necessary enlargement of facilities at Deepwater; that if tariffs were filed making rates effective via either gateway the present lay-out is such that traffic could not be handled in any quantity through either gateway.

V

That without in any way seeking to commit the Commission to the present approval of the said proposed lease, it is submitted that should said lease be approved the Commission would be without power to prevent the Norfolk & Western from withdrawing rates via the Chesapeake & [fol. 1623] Ohio to all competitive destinations in the West because of the short-hauling of the Norfolk & Western that would be entailed by the existence of such rates with the Chesapeake & Ohio; that in order to obviate the confusion that would result from such a change in the tariff situation

it is appropriate that the rates proposed via the Norfolk & Western at Matoaka be permitted to take effect as a substantial compliance with the Commission's order.

VI

That the order of the Commission does not require the establishment of joint rates in connection with the Chesapeake & Ohio. It requires only that all the defendants, including the Norfolk & Western, be required to participate in rates which shall be the same from mines to destinations as are presently published by the Chesapeake & Ohio from mines on its own line in the New River District; that therefore rates published via Matoaka and the Norfolk & Western constitute a full compliance with the Commission's order.

VII

That any through rates to the West published via any gateway on the New River District basis will not be in the public interest until existing facilities have been enlarged via whatever route the rates may be made effective; that no practical benefit can come to shippers by the mere publication of rates prior to the time when interchange facilities have been made adequate, because the inevitable result will be to congest the Virginian and its immediate connections [fol. 1624] involved in the rates, to the very great detriment of all shippers on both lines.

VIII

That it is estimated by the officials of the Norfolk & Western and the Virginian that efficient and adequate interchange facilities can be completed at Matoaka within 90 days; that it is estimated that adequate interchange via Deepwater and the Chesapeake & Ohio cannot be completed within six months.

IX

That the Virginian waives no rights with respect to the compliance with the order, so far as rates via the Chesapeake & Ohio are concerned, but that on the contrary it proposes to resist, so far as it may, the publication of rates on

coal via the Deepwater gateway, as indicated in its supplemental petition to reopen these proceedings, now pending before the Commission.

Wherefore this defendant prays:

(1) That the Commission shall reopen these proceedings pending the filing of the tariffs via the Norfolk & Western from Virginian mines to the Western markets; and

(2) That when said tariffs shall have become effective the order in this proceeding be set aside or so modified as [fols. 1625 & 1626] to render the establishment of such rates via the Norfolk & Western a full compliance therewith.

And your petitioner will ever pray.

Virginian Railway Company, by E. W. Knight,
Williams, Loyall & Tunstall, James W. Carmalt,
Attorneys.

Washington, D. C., April 27, 1925.

[fol. 1627] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER TO PETITION FOR REOPENING—May 1, 1925

The answer of complainants in the above-entitled proceedings to the petition of Virginian Railway Company for reopening and modification of order respectfully represents:

I

Complainants have no information as to the proposed [fol. 1628] lease of the Virginian Railway to the Norfolk & Western Railway for a period of 999 years other than that contained in newspaper accounts and the petition herein, but in any event the Commission may not in this proceeding give its approval to the proposed lease, and complainants' right to immediate relief under the Commission's order herein must, we submit, be held paramount to any alleged

exclusive right of the Virginian Railway to form other traffic arrangements in the future in line with its proposed consolidation plans.

II

The statement that the Virginian Railway will publish, effective August 1, 1925, westbound coal rates on the New River District basis via Matoaka, W. Va., and the Norfolk & Western requires no answer. Complainants welcome this evidence of a recognition on the part of the Virginian Railway that its shippers have an inherent right to reasonable rates to markets in the west, although complainants are convinced that the route via Matoaka will be impracticable and the rates via such route for the most part inoperative.

III

In paragraph III of defendant's petition, reference is made to a statement at the hearing by complainants' traffic witness to the effect that there would be no objection to the establishment of joint through rates to the west on the New River District basis via Matoaka and the Norfolk & Western.

Certainly the complainants herein have no objection to joint through rates to the west via Matoaka and the Norfolk & Western, and if the Virginian Railway carries out its stated intention of publishing rates via this route effective [fol. 1629] August 1, 1925, it can be accomplished without protest from complainants. Complainants do, however, vigorously oppose such proposal as a satisfaction of the order in this proceeding.

The complainants in these proceedings were drawn, and the evidence on behalf of complainants presented with reference to a westbound movement via the Chesapeake & Ohio Railway. Likewise the opinion of the Commission treats wholly with the contemplated westbound movement via the Chesapeake & Ohio Railway.

IV

The evidence in these cases described three points of interchange between the Virginian and Chesapeake & Ohio Railways in the New River District. It was testified by the

engineer who prepared for the Chesapeake & Ohio Railway the original plans for the Deepwater yards, that the present capacity of that yard was about 200 cars. The original plan called for a yard at Deepwater with a capacity of 350 cars, but was cut down to the present capacity. It was also testified by this same witness that it would be practical and feasible to extend the yard a thousand feet or more without undue expense, and that with such enlargement the yard could be made to accommodate about 350 cars. (Tr. 789-790.)

It was also testified that at Pemberton, W. Va. (in the heart of the New River District) there are two interchange tracks of 60 cars capacity each, both tracks being owned by the Virginian Railway. Actual interchange between the Virginian and the Chesapeake & Ohio takes place at Pemberton daily, it being testified that during the month of July, 1920, approximately 2,200 equivalent 50-ton loaded [fol. 1630] coal cars passed through this yard, or an average of about 75 loaded cars per day. (Tr. 792-794.)

Reference is further made in the testimony to four interchange tracks at Stone Coal Junction with an approximate capacity of 60 cars each, or total of 240 cars. Cars are likewise interchanged daily at this junction between the Virginian and Chesapeake & Ohio, it being stated by complainants' witness that in the month of June, 1922, 1810 loaded cars passed through the Stone Coal yards. (Tr. 795.)

It will thus be seen that the present track capacity of the three interchange yards between the Virginian Railway and Chesapeake & Ohio Railway at Deepwater, Pemberton and Stone Coal Junction is a total of 560 cars.

Counsel for the Virginian Railway at page 3 of their petition with reference to the interchange facilities at Deepwater, say:

"that the present interchange facilities would not absorb sufficient additional traffic to an extent greater than 15 cars per day;"

Counsel are entirely mistaken in this statement. There is not the slightest foundation for it. Counsel would only have had to examine the record to have ascertained that this statement is unsupported by the facts and is erroneous. Mr. W. F. Tams, who was the engineer for the Chesapeake

& Ohio Railway Company who originally laid out the yards at Deepwater, testified in response to questions from Counsel for the Virginian Railway as follows (at p. 813):

"Q. (By Mr. Carmalt). That is your judgment of it, that it would handle 80 or 90 carloads? It is now handling [fol. 1631] about 40 loads through there each way?

"A. Thirty each way for the year of 1922 up to and including the month of October, I believe, which was the last figure.

"Q. Then you figure that through this 200-car yard involving the use of a cross-over of the main tracks of the Chesapeake & Ohio, that there could be handled approximately 110 or 120 cars a day each way, under the present track layout?

"A. I previously stated 80 or 90 cars.

"Q. Additional to what is already there?

"A. Additional to what is already there.

"Q. That would make around 120 cars a day?

"A. Yes, sir."

It will thus be seen that the yard at Deepwater is capable of interchanging around 120 cars per day in each direction. In this connection, attention is directed to Appendix "A" of this answer, being a copy of Exhibit No. 59 in these proceedings, which said exhibit is a statement of the Car Accountant of the Virginian Railway showing the number of cars delivered by the Virginian Railway to the Chesapeake & Ohio Railway and the number of cars received by the Virginian Railway from the Chesapeake & Ohio Railway for the entire year 1921 and the first ten months of 1922, a total of 22 months. It will be observed that the average number of cars delivered per month by the Virginian Railway to the Chesapeake & Ohio Railway was 749.6 cars, which divided by 26, the average number of working days per month, would give in round figures an average of 29 cars per day delivered by the Virginian Railway to the C. & O. for a period of 22 months. From this same exhibit it will be observed that the Virginian Railway received from [fol. 1632] the Chesapeake & Ohio Railway an average of 887 cars per month, or an average of 34 cars per day. The record clearly shows that an additional 80 to 90 cars a day each way would be interchanged through the Deepwater

yard instead of 15 cars as alleged by Counsel on page 3 of their pending petition. It is to be noted that petition of the Virginian Railway Company is silent as to the interchange facilities at both Pemberton and at Stone Coal Junction. The petition of the Virginian Railway admits that the interchange facilities at Matoaka with the Norfolk & Western at present are entirely inadequate. On the other hand, the record shows that the present interchange facilities between the Virginian Railway and the Chesapeake & Ohio Railway are adequate for the present, and, as above pointed out, the original plan called for a yard at Deepwater with a capacity of 350 cars, and that it will be practical and feasible to extend the yard (present capacity 200 cars) a thousand feet or more, without undue expense, so as to accommodate about 350 cars. It is submitted, therefore, that the proposition of the Virginian Railway that the effective date of the tariffs be postponed until August 1 because of the lack of interchange facilities is entirely without merit so as the present interchange facilities between the Virginian and the Chesapeake & Ohio Railways are concerned.

The evidence is most persuasive that with the present interchange facilities between the Virginian and the Chesapeake & Ohio in the New River District, the movement of coal from the local Virginian mines to western markets could be accomplished with satisfaction to the shippers, and with reasonable efficiency and economy from the carriers' standpoint.

[fol. 1633] Moreover, complainants are informed that the Chesapeake & Ohio Railway Company is ready and willing to join with the Virginian Railway in the publication of westbound coal rates in accordance with the order of the Commission and to make the same effective May 20, 1925. Complainants are also informed, and believe it to be a fact, that prior to the public announcement of the proposed lease to the Norfolk & Western, the traffic officials of the Virginian and Chesapeake & Ohio Railways had actually agreed upon the publication of westbound coal rates via the Chesapeake & Ohio Railway to become effective May 20, 1925, in accordance with the order of the Commission.

Complainants are unalterably opposed to a patched-up temporary and ineffective route via Matoaka and the Norfolk & Western, with rates via that route to become effec-

tive August 1, 1925, as a satisfaction of the Commission's order in this proceeding. Certainly the Commission's order contemplates service as well as rates, and it further contemplates that such relief shall be immediately granted. The proposal of the Virginian Railway contained in the petition herein would satisfy neither of these requirements.

The service from complainants' mines to the west via the Chesapeake & Ohio Railway is a natural movement. The Virginian Railway proposes to substitute for this an unnatural and uneconomical movement. From the evidence in this case it will appear that to reach western markets from Virginian mines via Matoaka involves (1) a substantial haul eastbound over the main line of the Virginian, 13 miles of which, between Elmore and Clarks Gap is on a grade in excess of 2 per cent; (2) a movement through [fol. 1634] yards at Matoaka, which, according to defendant's petition, will accommodate an interchange of but 50 cars per day, and can only be accomplished under extremely adverse physical conditions; and (3) a haul of approximately 16 miles over a meandering single track branch line of the Norfolk & Western Railway from Matoaka to Blue-stone assembling yards.

That the Matoaka route for handling coal from Virginian mines to the west is uneconomical was frankly admitted by representatives of the Norfolk & Western Railway in the Consolidation hearings, I. C. C. Docket No. 12964. Mr. James E. Crawford, Assistant General Manager, Norfolk & Western Railway, testified on this point as follows (Tr. pp. 11039-11040):

“By Mr. Bronson:

“Q. Mr. Crawford, in your opinion could the Virginian tonnage be economically moved via Matoaka, bearing in mind the very much shorter and more direct and quicker route already existing via the Chesapeake & Ohio. I am talking about the present route via Matoaka without any construction whatsoever.

“A. Westbound?

“Q. Westbound Virginian tonnage.

“A. Economically?

“Q. Yes; economically.

“A. No, sir.

"Mr. Reak: It cannot be by existing junctions with the Chesapeake & Ohio either, can it, Mr. Crawford?

"Mr. Bronson: What do you mean by that?

"Mr. Reak: I am referring to that part of the question which assumes it can be handled by the Chesapeake & Ohio.

"By Mr. Bronson:

"Q. I am simply asking the simple question, bearing in [fol. 1635] mind the present route of the Chesapeake & Ohio and Virginian, if the tonnage, from all of these Virginian mines could be economically moved via Matoaka?

"A. No, sir."

The average distance from Virginian Railway mines to western destinations via the unnatural Matoaka route is more than 60 miles in excess of the average distance from these mines to western destinations via the Chesapeake & Ohio Railway. When consideration is given to the well-known fact that screened coal which remains in a railroad car is subjected to degradation due to its own weight, the long additional haul via Matoaka and the delays incident to the unnatural movement via that route become of utmost importance. Complainants must dispose of their coal in the western markets in competition with surrounding mines having a western outlet over the shorter and natural Chesapeake & Ohio route. Complainants cannot hope to successfully compete in the western markets unless they are accorded transportation service that is substantially equivalent to the service accorded their competitors.

Not only would the loaded cars of coal from the Virginian via Matoaka and the Norfolk & Western have to be hauled in excess of 60 miles over the average distance from the same mines to western destinations via the Chesapeake & Ohio Railway, but the empty cars returning to the Virginian Railway via the Norfolk & Western and Matoaka would likewise have to move an additional 60 miles, that is, the round trip of loaded cars from and empty cars to coal operations on the Virginian Railway via the Matoaka route would be in excess of 120 miles of the average distance via the Chesapeake & Ohio Railway.

[fol. 1636] Item No. 32, Form OSA, on file with the Commission, shows that for the year ending December 31, 1924,

the average car miles per car day on the Norfolk & Western was 35.6 miles and on the Chesapeake & Ohio Railway 43.8 miles, indicating that the Chesapeake & Ohio Railway moves each car each day a distance substantially 25 per cent greater than the Norfolk & Western Railway. It is not in the public interest that the more expeditious route via the Chesapeake & Ohio should be closed to the coal operators on the Virginian and they be forced to use only the less expeditious route via the Norfolk & Western.

The mines served locally by the Virginian Railway have long complained of their transportation disadvantages as compared with the so-called joint mines in the New River District. At the present time, the so-called joint mines have an outlet west and two outlets east, while the local Virginian mines have but a single outlet, and that to the east. The proposed connection via Matoaka, without a connection via the Chesapeake & Ohio, would give the joint mines access to two railroads west and two railroads east, while the local Virginian mines would have access to only one railroad east and west, and have its western movement depend on the exigencies of service received through the weak link of the single-track Bluestone Branch of the Norfolk & Western Railway. In other words, the Virginian's proposal, instead of alleviating the present disadvantages of the local Virginian shippers, would merely add to their burdens.

V-VI

In paragraph V of defendant's petition, it is stated that if the Commission should approve the proposed lease it [fol. 1637] would then be without power to prevent the Norfolk & Western from withdrawing rates via the Chesapeake & Ohio to competitive destinations in the west, and in order to obviate the confusion that would result from such a change in the tariff situation it is appropriate that the rates proposed by the Norfolk & Western via Matoaka be permitted to take effect as a substantial compliance with the Commission's order.

For the reasons heretofore stated, complainants would not, under existing circumstances and conditions, view rates via the Norfolk & Western at Matoaka as a substantial compliance with the Commission's order even though

such rates were published, as ordered, to become effective May 20, 1925. As it is, the Virginian Railway does not even propose to publish the rates via Matoaka until August 1, 1925, and apparently the only reason for not publishing rates via the Chesapeake & Ohio effective May 20th as ordered by the Commission, is the desire to avoid confusion. We submit that complainants' rights to through routes and just and reasonable rates applicable thereto are paramount to defendant's mere desire to avoid confusion. Each day's delay in the establishment of westbound rates is of serious consequence to complainants and it is wholly unwarranted that they should be made the pawn and their properties sacrificed in furtherance of an advantageous sale or lease of the Virginian Railway.

The Virginian claims no intention in paragraph V of its petition of seeking to commit the Commission to its consolidation proposal, and yet that paragraph must necessarily have been drawn on the definite assumption that the [fol. 1638] Commission will approve the proposed lease to the Norfolk & Western. No other conclusion than this is possible for the reason that the very same tariff confusion which the Virginian by its petition seeks to obviate would result should it publish rates effective August 1, 1925, via the Norfolk & Western and then the Commission in its ultimate decision in the Consolidation Case adhere to its tentative plans and assign the Virginian to the Chesapeake & Ohio.

VII-VIII

Defendant, Virginian Railway Co., contends that it will not be in the public interest to publish westbound rates via any gateway until existing facilities have been enlarged; that the inevitable result of such publication would be to congest the Virginian and its immediate connections involved in the rates, to the very great detriment of all shippers on both lines. In this connection, it is pertinent to note that the Chesapeake & Ohio Railway has expressed no concern over the possibilities suggested by the Virginian. In fact, complainants are informed that that Company is ready and willing to join in the rates with the confident belief that satisfactory service can be accorded.

IX

The petition of the Virginian states in substance that, regardless of the action taken by the Commission, it will resist, so far as it may, the publication of rates on coal via the Chesapeake & Ohio Railway.

Complainants submit that under the evidence in these proceedings and findings of the Commission, they are entitled to a specific order requiring the publication of New River District rates via the Chesapeake & Ohio Railway [fol. 1639] effective May 20, 1925. Should the Commission deny defendant's petition herein, and the defendant then institute injunction proceedings, it would seem appropriate that the statutory Court should have before it a specific order requiring the publication of rates via the only present workable routes.

It is respectfully submitted that the petition of the Virginian Railway Company for reopening and modification of order should be denied.

Respectfully submitted, James, Williamson & Scott,
806-8 Westory Building, Washington, D. C., on
Behalf of Complainants.

Washington, D. C., May 1, 1925.

[fol. 1640] APPENDIX "A" TO PETITION FOR REOPENING

Ex. No. 59

Statement Showing All Cars Received From and Delivered to the C. & O. Railway at Deepwater, West Virginia, for the Period Jan., 1921, to October, 1922, Incl.

1921			1922		
	Delivered	Received		Delivered	Received
January	757	776	January,	720	815
February,	743	1,001	February,	753	853
March,	719	866	March,	806	951
April,	645	719	April,	844	1,052
May,	653	732	May,	1,073	1,159
June,	621	665	June,	871	1,172
July,	686	698	July,	768	915
August,	706	807	August,	508	958
September,	753	713	September,	465	668
October,	712	956	October,	727	1,129
November,	948	991			
December,	1,019	919			
Total for			Total First		
1921 . . .			Ten		
8,962			Months		
9,843			1922 . . .	7,535	9,672
			Grand		
			Total .	16,497	19,515
			Avg. per mo.	749 6	887 0

C. E. Reynolds, Car Accountant.

Norfolk, Va., November 16, 1922.

[fol. 1641] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE CHESAPEAKE & OHIO RAILWAY COMPANY TO
PETITION FOR REOPENING—May 8, 1925

[fol. 1642] Comes now the Chesapeake & Ohio Railway Company, a Defendant in the above-entitled proceedings, and prays that the Commission shall deny the petition to reopen these proceedings and for modification of the Commission's order, except to the extent herein named, and as grounds therefor respectfully shows:

I

That rates via Matoaka and Norfolk & Western Railways to western points, are, your petitioner is advised, unsatisfactory to complainants and other shippers of coal from Virginian mines.

II

That the present interchange facilities at Matoaka are inadequate and the indirect and roundabout route by Matoaka, involving as it does, a backhaul over the steepest grade against the load on the Virginian Railway and over an unimportant branch line of the Norfolk & Western is not a route over which Virginian western coal can be efficiently and economically transported (See No. 12963 Consolidation of Railroads, Systems Nos. 8 and 9, and particularly Rp. 11039-40).

III

That on the other hand, Chesapeake & Ohio and Virginian interchange facilities at Deepwater and Pemberton are believed to be entirely adequate to take care of all present or immediately prospective additional Virginian western coal and the route via the Chesapeake & Ohio Railway is the only direct route efficient and economical of operation available to Virginian western coal.

IV

That approximately 55 per cent of all mines in the New River District served by the Virginian Railway, are and for years have been, served by the Chesapeake & Ohio Railway.

V

That all such mines already have an efficient and economical route for western coal direct from the mines over the Chesapeake & Ohio Railway and that facilities at Deepwater and Pemberton are believed to be ample and sufficient to take care of all western coal shipped from the remaining 45 per cent of Virginian mines not now provided with a western outlet via the Chesapeake & Ohio Railway.

VI

That Complainants and petitioning intervenors operating the remaining 45 per cent of all the mines in the New River District, served by the Virginian comprising the mines which are not now served by the Chesapeake & Ohio Railway, if confined to the use of the inefficient and uneconomical route by Matoaka, will be at a distinct disadvantage in respect of service to their joint mine competitors now enjoying the higher standard of service afforded by the efficient and economical route of the Chesapeake & Ohio Railway.

VII

That Defendant, The Chesapeake & Ohio Railway Company, has stood ready at all times to obey the order of the Commission entered in these proceedings and to join the Virginian in the establishment of through routes via Deepwater or Pemberton, or both, and to that end the Virginian Railway Company has long since been provided with a general Power of Attorney, under which it has authority, as the initial carrier, to publish New River District rates from local mines served by it via the route of the Chesapeake & Ohio Railway to western destinations.

VIII

That the Chesapeake & Ohio Railway Company offers no objection to the establishment of through routes and the publication of joint rates via Matoaka and Norfolk & Western Railways, but to avoid participation in what may be found to be an unjust discrimination against Virginian mines not now served by the Chesapeake & Ohio Railway, insist that coincidentally, the Virginian, as the initial carrier, be required to publish the River District rates via the route of the Chesapeake & Ohio Railway, from such mines served by it as are not now served by the Chesapeake & Ohio Railway for the transportation of western coal.

IX

That the Chesapeake & Ohio Railway Company offers no objection to the postponement of the effective date of the

order for the sole purpose of permitting a review in the court of the decision of the Commission.

Wherefore, this Defendant prays:

(1) That the Commission deny the petition to reopen these proceedings.

(2) That the Commission deny the petition to modify the order entered in these proceedings, except to the extent indicated herein.

The Chesapeake & Ohio Railway Company, by W. S. Bronson, Attorney.

Washington, D. C., May 8, 1925.

[fols. 1645 & 1646] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER DENYING PETITION FOR REOPENING—May 11, 1925

Upon further consideration of the records in the above-entitled proceedings, and of petition and amended petition for reopening and modification of the order entered therein, filed on behalf of The Virginian Railway Company:

It is ordered, That the said petitions be, and they are hereby, denied,

By the Commission:

George B. McGinty. Secretary. (Seal.)

[fol. 1647] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR MODIFICATION OF THE COMMISSION'S ORDER IN THE ABOVE-ENTITLED CASES SO AS TO PERMIT COMPLIANCE THEREWITH ON ONE DAY'S NOTICE—May 13, 1925

Comes now The Virginian Railway Company and respectfully petitions the Interstate Commerce Commission to permit compliance with its order in the above-entitled cases

by publication upon one day's notice, instead of as now required by the said order by publication upon thirty days' notice.

In support of said petition your petitioner represents:

That, in the report and order in these cases, your petitioner is required to establish on or before May 20, 1925, upon notice to your Commission and to the general public, by not less than thirty days' filing and posting in the man-[fol.1648] ner prescribed in Section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the transportation of coal, in earloads, from said complainants' mines at Hot Coal, Wyco, Jonben, Tracoal (present name Nuriva), Devils Fork, Corinne and Fireco, W. Va., to destinations enumerated in the tariffs referred to in appendix "B" of the complaint in No. 14454, which shall not exceed the rates contemporaneously maintained on like traffic from points on the main line and branch lines of the defendant, The Chesapeake and Ohio Railway Company, in the New River District, to the same destinations.

After the decision of the Commission was announced, this petitioner on March 28, 1925, filed with your Commission a petition for reopening, argument before the full Commission, and postponement of the effective date of the Commission's order. That petition was denied by the Commission on April 14, 1925. On April 21, 1925, a second petition was filed by the petitioner, requesting a postponement of the effective date of the order, and on April 28, 1925, still another petition was filed by this petitioner asking for a modification of the Commission's order in certain respects deemed by it to have been made appropriate by the announcement, since the original decision, of the proposed lease of the property of the petitioner to the Norfolk and Western Railway Company. Both of the last two petitions were denied by the Commission's order of May 11, 1925 (announced today).

Because of the pendency of those petitions the defendants have not taken the steps necessary to comply with the Commission's order, particularly as it had been and is now the purpose of your petitioner to contest in the Courts the validity of the Commission's order as it now stands and [fol.1649] it was expected that, in accordance with the

usual practice of the Commission, the effective date of the order would be postponed for a reasonable period to enable the necessary proceedings to be instituted. So the situation now is that the defendants are unable to publish the rates effective May 20, 1925, upon thirty days' notice, as required by the order.

It is the purpose of the Virginian Railway Company to publish the rates to western points as prescribed by the Commission so that they will apply via the route through Matoaka, in connection with the Norfolk & Western, and to publish the rates to points in Maryland and the District of Columbia as prescribed by the Commission so that they shall apply via the route through Altavista in connection with the Southern Railway, even though it succeeds in enjoining the enforcement of the Commission's order and this petitioner respectfully prays that the order in these cases be modified so as to permit compliance therewith by the publication of the rates prescribed effective May 20, 1925, upon one day's notice.

Respectfully submitted, The Virginian Railway Company, by S. M. Adsit, Traffic Manager.

Washington, D. C., May 13, 1925.

[fol. 1650] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER ALLOWING MODIFICATION—May 14, 1925

Upon further consideration of the records in the above entitled proceedings, and upon a petition filed on behalf of defendant Virginian Railway Company to permit compliance with the order entered in said proceedings upon one day's notice in lieu of the thirty days' notice now required by said order, and good cause appearing therefor:

It is ordered, that all defendants in said proceedings be and they are hereby authorized to establish rates as prescribed in said order on one day's notice instead of the thirty days' notice therein prescribed, and that the effective date of said order be and it is hereby extended to and including June 1, 1925.

It is further ordered, that the order entered in these proceedings remain in full force and effect in all other respects.

By the Commission, Division 3.

George B. McGinty, Secretary. (Seal.)

[fols. 1651 & 1652] Secretary's certificate to following Complaint and answers omitted in printing.

[fol. 1653] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

COMPLAINT—Filed November 11, 1922

Complaint of the above named complainants shows:

I

That complainant, Wyoming Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, com-[fol. 1654] monly and popularly known as "smokeless coal"; that its mine is located at Wyco, Wyoming County, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Tams, West Virginia.

II

That complainant, Wilton Smokeless Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mines are located at or near Jonben, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Beckley, West Virginia.

III

That complainant, Trace Fork Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mines are located at or near Tracoal, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Tracoal, West Virginia.

[fol. 1655]

IV

That complainant, Devil's Fork Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mines are located at or near Devil's Fork, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Devil's Fork, West Virginia.

V

That complainant, Miller-Pocahontas Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known as "smokeless coal"; that its mines are located at or near Corinne, West Virginia, on the Virginian Railway in the territory commonly known as the New River District; that said company maintains its principal office at Corinne, West Virginia.

VI

That Complainant, Leckie Fire Creek Smokeless Coal Company, is a corporation duly organized and existing under the laws of the State of West Virginia, engaged in the business of mining, producing, selling and disposing of semi-bituminous coal, commonly and popularly known

as "smokeless coal"; that its mine is located at or near Fireco, West Virginia, on the Virginian Railway in the [fol. 1656] territory commonly known as the New River District; that said company maintains its principal office at Welch, West Virginia.

VII

That defendants, carriers named in Appendix "A" hereto attached and by reference made a part hereof, are common carriers engaged in the transportation of property, including coal, wholly by railroad and partly by railroad and partly by water between points in the State of West Virginia and points in the States of Kentucky, Virginia, Ohio, Indiana, Illinois, Michigan, Pennsylvania, New York, District of Columbia, and other States of the United States and the Dominion of Canada, and as such common carriers are subject to the provisions of the Interstate Commerce Act, and all acts amendatory thereof and supplementary thereto including the Transportation Act of 1920.

VIII

That there is a large territory in the United States commonly known as the "New River District," "Pocahontas District," "Tug River District," and "Winding Gulf District," wherein there are large deposits of bituminous coal known as semi-bituminous coal and popularly referred to as "smokeless coal," and that there are numerous mines, large and small, throughout said territory wherein is mined and produced said semi-bituminous coal, and the operators of said mines produce and mine said coal and sell said coal and ship and transport said coal in interstate and foreign commerce; that said semi-bituminous coal is used for domestic coal, for the production of steam [fol. 1657] and for the production of light, heat and power, and as railroad fuel and as bunker coal, and is used in supplying fuel for ships forming part and parcel of the United States Navy and the Merchant Marine, and in ships in the coastwise trade, in the foreign trade, and the inland waterways and on the Lakes, and is used for by-product purposes; that the producers of said coal, including the complainants, are in active and sharp competition; that

the fostering, promotion and stimulation of the production and distribution of said semi-bituminous coal is necessary and desirable in the public interest; that all of said semi-bituminous coal is in sharp competition; that it is necessary and desirable in the public interest and it is just and reasonable that all of said coal should be maintained on a competitive basis, and that rates from all of said territory producing said semi-bituminous coal should be upon a parity to common destinations in interstate commerce, and that the carriers serving said territory have as a rule maintained common rates known as "district rates," from all said points of production to common points of destination in interstate commerce; that it is desirable in the public interest that consumers of said coal may resort to many markets and bring said markets into competition.

IX

That the mines and lands of complainants are geographically, geologically and commercially and from a transportation point of view, within the territory described in paragraph VIII wherein a common group rate is generally applicable throughout said territory from mines on main lines and branches.

[fol. 1658]

X

That defendant, Chesapeake & Ohio Railway Company, issues and publishes and files with the Interstate Commerce Commission numerous tariffs naming joint through rates on the group basis from coal operations located on its main line and branch lines in the New River District, to various points of destination, a list of which tariffs is set forth in Appendix "B" of this complaint, which tariffs set forth in said Appendix "B" are by reference made part and parcel of this complaint.

XI

That defendants have failed, neglected or refused to establish and put in force joint through rates on coal from complainants' mines on the Virginian Railway to interstate destinations named in the tariffs set forth in said Appendix "B" to this complaint; that the rates now main-

tained from complainants' coal operations to points of destination enumerated in said tariffs set forth in said Exhibit "B," are made up of the combination of local rates published by the Virginian Railway plus rates published by the Virginian Railway plus rates published by the Chesapeake & Ohio Railway; that said combination rates are so excessive as to render it utterly impossible for complainants to dispose of the products of their mines at points of destination enumerated in said tariffs set forth in said Appendix "B" in competition with other coal producing companies in the New River District served by the Chesapeake & Ohio Railway and enjoying so-called New River District rates.

[fol. 1659]

XII

That defendant, The Virginian Railway Company, has by certain trackage contracts and operating agreements entered into with defendant, Chesapeake & Ohio Railway Company, secured to numerous coal operations in New River District located on lines owned and operated by said defendant, The Virginian Railway Company the New River District group basis of rates on coal traffic both eastbound and westbound via the Chesapeake & Ohio Railway and its connections; that the coal shipping stations at which said coal operations are located are named in the tariffs of the Chesapeake & Ohio Railway as Chesapeake & Ohio Railway stations, and said company publishes and applies the New River District group rates from said operations the same as from operations in the New River District located locally on its own lines; that said operations by reason of the joint service accorded under the terms of said trackage contracts and operating agreements are unduly and unjustly preferred to the undue, unjust and unreasonable prejudice and disadvantage of complainants' mines; that by reason of said trackage contracts and operating agreements competitors of complainants in the New River District are given the benefit of the service and the rates of both lines while the service and the rates of both lines are denied to complainants; that defendants by giving to competitors of complainants in the New River District the benefit of the service and the rates on both lines under the terms of said trackage contracts and operating agreements

[fol. 1660] while denying to complainants the benefit of the service and the rates of both lines give to said competitors of complainants an undue preference and advantage and subject complainants to undue prejudice and disadvantage.

XIII

That the defendant, Chesapeake & Ohio Railway Company, by tariffs duly filed with the Commission, publishes and applies New River District group rates on bituminous coal from St. Paul, Virginia, and other originating stations served by the Carolina, Clinchfield & Ohio Railroad, to points of destination throughout Central Freight Association territory (Chesapeake & Ohio Tariff I. C. C. No. 8665); that coal operations located at or near St. Paul, Virginia, and other originating stations on the Carolina, Clinchfield & Ohio Railroad from which joint through rates on coal are named by the Chesapeake & Ohio Railway Company on the New River District basis to destinations generally throughout Central Freight Association territory are by reason of the facts alleged accorded an undue and unreasonable preference and advantage to the undue, unjust and unreasonable prejudice and disadvantage of complainants' mines.

XIV

That there is a present and constantly increasing demand for coal produced at complainants' mines at points of destination enumerated in said tariffs set forth in said Appendix "B" and it is therefore necessary and desirable [fol. 1661] in the public interest that defendant carriers should issue, publish and file with the Interstate Commerce Commission joint through rates from the coal operations of complainants located on the line of railroad of defendant, the Virginian Railway Company, to said destinations on the same basis as the rates applying from mines of complainants' competitors located on the Chesapeake & Ohio Railway in the New River District.

XV

That by reason of the facts aforesaid complainants have been subjected to rates for transportation which were and are unjust and unreasonable in violation of Section 1 of

the Interstate Commerce Act, and unduly prejudicial in violation of Section 3 thereof.

Wherefore, complainants pray that defendant carriers may be required to answer the charges herein; that after due hearing and investigation an order may be made commanding defendant carriers, and each of them, to cease and desist from the aforesaid violations of said Interstate Commerce Act and all acts amendatory thereof and supplemental thereto, particularly the Transportation Act of 1920, and establish and put in force and apply in the future to the transportation of coal from complainants' mines to destinations enumerated in the tariffs set forth in Appendix "B" hereof, joint through rates on the New River District basis in lieu of the present unjust, unreasonable, unduly prejudicial and discriminatory rates, and that such further [fol. 1662] order or orders be made as the Commission may consider proper in the premises.

Respectfully submitted, Wyoming Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Wilton Smokeless Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Trace Fork Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Devil's Fork Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Miller-Pocahontas Coal Company, by Francis B. James, Its Attorney in Fact and Counsel. Leckie Fire Creek Smokeless Coal Company, by Francis B. James, Its Attorney in Fact and Counsel.

Washington, D. C., November 9, 1922.

[fol. 1663] APPENDIX "A" TO COMPLAINT

Defendant Carriers by Reference Made Parties Defendant
to This Complaint

The Virginian Railway Company,
The Chesapeake & Ohio Railway Company,
The Chesapeake & Ohio Railway Company of Indiana,
Chesapeake Steamship Company,

Chesapeake Western Railway,
 Ann Arbor Railroad Company,
 The Atchison, Topeka & Santa Fe Railway Company,
 Baltimore & Ohio Chicago Terminal Railroad Company,
 The Baltimore & Ohio Railroad Company,
 Boyne City, Gaylor & Alpena Railroad Company,
 Carolina, Clinchfield & Ohio Railway,
 Central Indiana Railway Company,
 The Chesapeake and Ohio Northern Railway Company,
 The Chicago & Alton Railroad Company,
 Chicago, Burlington & Quincy Railroad Company,
 Chicago & Eastern Illinois Railroad Company, and William
 J. Jackson, Receiver,
 Chicago & Erie Railroad Company,
 Chicago Great Western Railroad Company,
 The Chicago, Indianapolis & Louisville Railway Company,
 Chicago, Kalamazoo & Saginaw Railway Company,
 Chicago, Milwaukee & Gary Railway Company,
 Chicago, Milwaukee & St. Paul Railroad,
 Chicago & Northwestern Railway Company,
 Chicago, Peoria & St. Louis Railroad Company, and Bluford
 Wilson and Wm. Cotter, Receivers,
 The Chicago, Rock Island & Pacific Railway Company,
 [fol. 1664] Cincinnati, Georgetown & Portsmouth Railroad,
 The Cincinnati, Indianapolis & Western Railroad Company,
 The Cincinnati, Lebanon & Northern Railway Company,
 The Cleveland, Cincinnati, Chicago & St. Louis Railway
 Company,
 The Dayton & Union Railroad Company,
 The Dayton, Toledo and Chicago Railway Company,
 The Detroit & Huron Railway Company,
 Detroit & Mackinac Railway Company,
 Detroit, Toledo & Ironton Railroad Company,
 Detroit and Toledo Shore Line Railroad Company,
 The East Jordan and Southern Railway Company,
 Elgin, Joliet & Eastern Railway Company,
 Erie Railroad Company,
 Erie & Michigan Railway and Navigation Company,
 Felicity & Bethel Railroad Company,
 Fort Wayne, Cincinnati & Louisville Railroad Company,
 Grand Rapids & Indiana Railway Company,
 Grand Trunk Western Railway Company,

The Home Avenue Railroad Company,
 The Hocking Valley Railway Company,
 Illinois Central Railroad Company,
 Illinois Terminal Railroad Company,
 Indiana Harbor Belt Railroad Company,
 Kalamazoo, Lake Shore & Chicago Railway Company,
 The Kanawha & Michigan Railway Company,
 Kentucky & Indiana Terminal Railroad Company,
 The Lake Erie & Western Railroad Company,
 The Lorain, Ashland & Southern Railroad Company,
 The Lorain & West Virginian Railway Company,
 Louisville, Henderson & St. Louis Railway Company,
 [fol. 1665] Louisville & Nashville Railroad Company,
 Manistee & Northeastern Railroad, and The Michigan Trust
 Company, Receiver,
 Michigan Railroad Company,
 The Michigan Central Railroad Company,
 The Minneapolis & St. Louis Railroad Company,
 New Jersey, Indiana & Illinois Railroad,
 The New York Central Railroad Company,
 The New York, Chicago & St. Louis Railroad Company,
 Norfolk & Western Railway Company,
 The Northern Ohio Railway Company,
 The Ohio Electric Railway Company, and B. J. Jones, Re-
 ceiver,
 The Pennsylvania Railroad Company, Western Lines,
 The Pennsylvania Railroad Company,
 Peoria & Pekin Union Railway Company,
 Pere Marquette Railway Company,
 The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad
 Company,
 The Pittsburgh & Lake Erie Railroad Company,
 Pontiac, Oxford & Northern Railroad Company,
 Rapid City, Black Hills and Western Railroad Company,
 The Rapid Railway Company,
 Rapid Railroad Company,
 St. Louis and Hannibal Railroad Company,
 St. Louis Merchants Bridge Terminal Railway Company,
 St. Louis Transfer Railway Company,
 Southern Railway Company,
 Terminal Railroad Association of St. Louis,
 The Toledo & Ohio Central Railway Company,

[fol. 1666] Toledo, Peoria & Western Railway Company,
 and S. M. Russell, Receiver,
 Toledo, St. Louis & Western Railroad Company, and W. L.
 Ross, Receiver,
 The Toledo & Western Railroad Company,
 Wabash Railway Company,
 The Wabash, Chester & Western Railroad Company,
 The Wheeling & Lake Erie Railway Company,
 Wiggins Ferry Company,
 The Zanesville & Western Railway Company.

APPENDIX "B" TO COMPLAINT

Tariffs by Reference Made Part and Parcel of this
 Complaint

Chesapeake & Ohio Railway Freight Tariff I. C. C. No.
 8665 and Supplements Nos. 14, 21 and 25 thereto.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No.
 9368.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No.
 9363.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No.
 9206 and Supplement No. 1 thereto.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No.
 9366.

Chesapeake & Ohio Railway Freight Tariff I. C. C. No.
 9369.

[fol. 1667] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF DEFENDANT CHICAGO AND EASTERN ILLINOIS RAIL-
 WAY COMPANY, SUCCESSOR OF CHICAGO AND EASTERN
 ILLINOIS RAILROAD CO., WILLIAM J. JACKSON, RECEIVER—
 Filed December 7, 1922

Now comes defendant above named and, for its answer
 to the complaint filed herein, respectfully states:

1, 2, 3, 4, 5, and 6

This defendant has no information respecting the truth or falsity of the allegations contained in Paragraph 1.

7

This defendant admits it is a common carrier and, as such, is subject to the provisions of the Act to Regulate Commerce.

8, 9, 10, 11, 12, 13, and 14

This defendant has not checked the allegations contained in Paragraphs 8 to 14 inclusive, and can, therefore, neither admit nor deny the correctness of the same, but leaves complainant to the strict proof thereof at the trial of this case.

15

This defendant denies the allegations contained in Paragraph 15 of the Complaints.

Wherefore, having fully answered, this defendant prays the dismissal of the complaint filed herein.

[fol. 1668] K. L. Richmond, Attorney for Defendant
Chicago and Eastern Illinois Railway Company.

Dated at Chicago, Illinois, Dec. 5, 1922.

—

[fol. 1669] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF DEFENDANT DETROIT AND MACKINAC RAILWAY
COMPANY—Filed December 8, 1922

Now comes the Detroit and Mackinac Railway Company, one of the defendants named in the above entitled cause, and answering the complaint therein says it will concur in the defense thereto made by its direct connections, the Grand Trunk Ry., Michigan Central R. R. and Pere Marquette Ry., and be governed by the result and abide by the

decision rendered therein by the Interstate Commerce Commission, reserving the right to make appearance and offer testimony as evidence therein.

Dated December 4th, 1922.

Detroit and Mackinac Railway Company, by G. L. Wakeman, Traffic Manager East Tawas, Michigan.
Henry & Henry, Attorneys for defendant.

Business Address: Alpena, Michigan.

To Francis B. James, Commerce Counsel; E. E. Williamson, Rate & Transp. Specialist; Ewing H. Scott, Commerce Counsel, 803 Westory Bldg., Washington, D. C.

[fol. 1670] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE FORT WAYNE, CINCINNATI AND LOUISVILLE RAILROAD COMPANY, THE LAKE ERIE AND WESTERN RAILROAD COMPANY, AND OF THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY—Filed December 11, 1922

1-6. These defendants admit the corporate organization, business and location of complainants herein, as alleged in Paragraphs 1, 2, 3, 4, 5 and 6.

7. These defendants admit that they are common carriers, subject to the provisions of the Interstate Commerce Act, and all acts amendatory thereof and supplementary thereto, including the Transportation Act of 1920, as alleged in Paragraph 7.

8. These defendants admit the territorial coal districts as alleged in Paragraph 8, and the mining of coal from said districts.

9. These defendants admit that complainants' mines are geographically, geologically and commercially situated as alleged in Paragraph 8. For their answer to allegations in Paragraph 9, relating to the rates applicable throughout said territory, on main lines and branches, and to establish the truth or falsity of those allegations, these defendants

respectfully refer to tariffs on file with the Interstate Commerce Commission.

10, 11. For their answer to allegations in Paragraphs 10 and 11, relating to the tariffs published and filed by the Chesapeake & Ohio Railway Company, and rates from com-[fol.1671] plainants' mines to destinations, and to establish the truth or falsity of those allegations, these defendants respectfully refer to tariffs on file with the Interstate Commerce Commission. These defendants deny that the rates assessed and collected for complainants' shipments are excessive as alleged in Paragraph 11.

12. These defendants refer to and adopt the answer of The Virginian Railway Company and Chesapeake & Ohio Railway Company to Paragraph 12.

13. For their answer to allegations in Paragraph 13, relating to rates published by the Chesapeake & Ohio Railway Company on coal from St. Paul, Virginia, and other points, to Central Freight Association territory, and to establish the truth or falsity of those allegations, these defendants respectfully refer to tariffs on file with the Interstate Commerce Commission. These defendants deny that the rates on coal from St. Paul, Virginia to Central Freight Association territory are accorded an undue and unreasonable preference and advantage to the undue, unjust and unreasonable prejudice and disadvantage of complainants herein, as alleged in Paragraph 13.

14. These defendants have no information as to the demand for complainants' coal or the necessity of joint through rates from complainants' mines to points of destination, and can therefore, neither admit nor deny allegations in Paragraph 14, relating thereto, but ask that complainants may be put upon their strict proof as to those allegations.

15. These defendants specifically deny that complainants have been subjected to rates for the transportation of their shipments which were and are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and unduly prejudicial in violation of Section 3 thereof, as alleged in Paragraph 15.

Wherefore, having fully answered, these defendants pray that the complaint herein may be dismissed.

[fol. 1672] The Fort Wayne, Cincinnati and Louisville Railroad Company, by W. A. Colston, Its Attorney. The Lake Erie and Western Railroad Company, by W. A. Colston, Its Vice-President and General Counsel. W. A. Colston, 607 Columbia Building, Cleveland, Ohio. The New York, Chicago and St. Louis Railroad Company, by W. J. Stevenson, Its General Solicitor. W. J. Stevenson, 607 Columbia Building, Cleveland, Ohio.

December 7, 1922.

[fol. 1673] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF DEFENDANT ILLINOIS CENTRAL RAILROAD COMPANY—Filed December 9, 1922

For its answer to the complaint herein, this defendant respectfully states:

It asks that reference may be had to the tariffs on file with this Honorable Commission for a correct statement of the rates mentioned or referred to in the complaint.

It denies that anything done or omitted by it with respect to the matters complained of herein was or is in violation of the provisions of the Act to Regulate Commerce, as alleged. It denies that the complainants are entitled to the relief prayed or to any other relief, and it denies that this defendant should be subjected to any adverse order whatsoever.

Wherefore this defendant prays that it may be hence dismissed.

Illinois Central Railroad Company, by A. P. Hymburg, Its Attorney. Stevens.

[fol. 1674] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

JOINT ANSWER OF THE PENNSYLVANIA RAILROAD COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY-WESTERN LINES,
THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS
RAILROAD COMPANY, THE LORAIN, ASHLAND AND SOUTHERN
RAILROAD COMPANY, GRAND RAPIDS AND INDIANA RAILWAY
COMPANY, AND THE CINCINNATI, LEBANON AND NORTHERN
RAILWAY COMPANY—Filed December 14, 1922

For their answer to the complaint filed in the above en-
titled proceeding these respondents respectfully state and
show:

I, II, III, IV, V, VI

They admit the allegations contained in these para-
graphs.

VII

They admit that they are common carriers over their own
lines of railroad and as such are subject to the provisions
of the Interstate Commerce Act and the Transportation
Act, 1920.

VIII

These respondents admit as to location of New River and
other districts but they are not familiar as to details of
operation of mines.

IX

These respondents have no knowledge of location of com-
plainants' mines.

X

That the tariffs published by the Chesapeake & Ohio
Railway Company are on file with the Interstate Commerce
Commission.

[fol. 1675]

XI

That they do not have sufficient knowledge to affirm or
deny this allegation.

XII

These respondents have no knowledge of trackage arrangements between the Virginian Railway Company and the Chesapeake & Ohio Railway Co.

XIII

These respondents have no knowledge of relations between Chesapeake & Ohio Railway Company and Carolina, Clinchfield and Ohio Railroad.

XIV

They have no knowledge of demand on complainants for coal.

Wherefore they pray that as to them said complaint may be hence dismissed.

Respondents Above Named, by J. C. Venning, Agent,
in Their Behalf. James Stillwell, of Counsel.

925 Pennsylvania Station, Pittsburgh, Pennsylvania.

[fol. 1676] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF LOUISVILLE & NASHVILLE RAILROAD COMPANY—
Filed December 11, 1922

I, II, III, IV, V, VI

That it is without sufficient information or knowledge to either affirm or deny the allegations of these paragraphs.

VII

That it admits it is a common carrier subject to the Interstate Commerce Act and acts amendatory thereof and supplementary thereto.

VIII, IX

That it denies it has sufficient information or knowledge to form a belief as to the correctness of the allegations of these paragraphs.

X, XI, XII, XIII, XIV

That it denies each and every allegation of these paragraphs, except, that it respectfully refers to tariffs lawfully published, posted and filed with this Honorable Commission for the correct rates on the dates and between the points referred to therein.

XV

That it denies each and every allegation of this paragraph.

Wherefore defendant avers that complainants are not entitled to the relief sought nor to any relief whatsoever and having fully answered prays to be hence dismissed.

[fol. 1677] Louisville and Nashville Railroad Company, by W. A. Northcutt, General Solicitor.

Louisville, Ky., December 6, 1922.

[fol. 1678] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY Co.—Filed December 14, 1922

I

As to the allegations contained in Paragraph I of said complaint, this company has not sufficient knowledge upon which to base a belief.

II

This defendant admits the allegations contained in Paragraph II of said complaint.

This defendant admits the allegations contained in the remaining paragraphs of this complaint only in so far as same relates to the lawful tariff provisions and matters of

record on file with the Interstate Commerce Commission; otherwise the same are specifically denied.

Having fully answered, this defendant prays that the complaint be hence dismissed.

Yours truly, E. P. Venia, General Freight Agent.

Chicago, Ill., December 11, 1922.

C/o Mr. Ewing H. Scott, Commerce Counsel, 803 West-
ory Bldg., Washington, D. C.

[fol. 1679] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF CHICAGO, BURLINGTON & QUINCY RAILROAD CO.—
Filed December 11, 1922

Now comes the Chicago, Burlington & Quincy Railroad Company, one of the defendants herein, and for its separate answer respectfully shows:

I

Defendant neither admits nor denies the allegations of paragraphs one to six inclusive, but prays for proof thereof.

II

Defendant admits it is a common carrier subject to the provisions of the Interstate Commerce Act.

III

Answering remaining allegations of the complaint, defendant refers to the tariffs on file with this Honorable Commission as to the best evidence of their contents and provisions, and denies that the rates, rules and regulations complained of are, or were, unjust or unreasonable, or unjustly discriminatory, or in violation of the Interstate Commerce Act.

IV

Except as herein admitted or otherwise answered, defendant denies each and every allegation, matter and thing in the said complaint contained.

Wherefore, having fully answered the complaint, defendant prays that the same may be dismissed as to it.

Chicago, Burlington & Quincy Railroad Co., by Kenneth F. Burgess, General Attorney.

OFM.

Chicago, Illinois, December 9th, 1922.

[fol. 1680] I hereby certify I have served copy of the above and foregoing answer upon the complainant by depositing same in the United States Mail, postage prepaid, addressed to Mr. Francis B. James, Commerce Counsel, 803-808 Westory Bldg., Washington, D. C.

By Kenneth F. Burgess, General Attorney.

Chicago, Illinois, December 9th, 1922.

OFM.

[fol. 1681] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY AND BLUFORD WILSON AND WILLIAM COTTER, ITS RECEIVERS—Filed December 18, 1922

Now come Chicago, Peoria and St. Louis Railroad Company and Bluford Wilson and William Cotter, its Receivers, Respondents, and for answer unto the complaint filed in the above entitled matter, deny each and every allegation contained therein; and further answering deny that Complainants are entitled to the relief or any part thereof prayed therein against these Respondents; and these Respondents having fully answered, pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

Chicago, Peoria & St. Louis Railroad Company,
Bluford Wilson, and William Cotter, Receivers,
by R. B. Davis, General Counsel.

[fol. 1682] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—Filed December 20, 1922

Passing by the informal and immaterial paragraphs of the complaint, and coming to paragraphs VIII to XV inclusive, which state the grievance of complainants, the Atchison, Topeka and Santa Fe Railway Company for answer says:

VIII and IX

It is without information as to the averments of paragraphs VIII and IX, and it therefore denies the same and asks for strict proof thereof.

X

For verification of the averments of paragraph X, it respectfully refers to the tariffs on file with the Interstate Commerce Commission.

XI

For verification of the averments of paragraph XI, it respectfully refers to the tariffs set forth in Appendix "B" to the complaint, on file with the Interstate Commerce Commission.

Further answering said paragraph, it denies that the rates complained of are excessive, as alleged.

XII

It is without information as to the averments of paragraph XII; and, basing its denial upon that ground, it denies the same and asks for strict proof thereof.

[fol. 1683]

XIII

For verification of the averments of paragraph XIII, it respectfully refers to the tariff therein set forth, on file with this Honorable Commission.

Further answering said paragraph, it denies that the rates complained of result in undue or unreasonable pref-

erence of those named, in Central Freight Association territory, or in undue, unjust, or unreasonable prejudice or disadvantage to complainants' mines, as alleged.

XIV

It is without information as to the averments of paragraph XIV, and it therefore denies the same and asks for strict proof thereof.

XV

It denies that complainants have been subjected to the payment of rates which were or are unjust, unreasonable, unduly prejudicial, or in violation of any of the provisions of the Interstate Commerce Act.

Wherefore it asks that the complaint be dismissed as to it.

The Atchison, Topeka and Santa Fe Railway Company, by G. J. Norton, F. E. Andrews, Its Attorneys.

Chicago, Dec. 18, 1922.

[fol.1684] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF ERIE RAILROAD COMPANY AND CHICAGO AND ERIE RAILROAD COMPANY—Filed December 20, 1922

1. They have no knowledge or information sufficient to enable them to answer the allegations contained in paragraphs I-VI inclusive.

2. They admit that they are common carriers engaged to some extent in the interstate transportation of property by railroad.

3. They deny that their rates, fares or charges complained of are unreasonable or otherwise unlawful. For further answer they beg to refer to the answers filed or to be filed by the Virginian Railway Company and its direct connections.

Wherefore these respondents pray that as to them the complaint be dismissed.

Erie Railroad Company, Chicago and Erie Railroad Company, by *Y. C. Voisell*, Vice President. *M. B. Pierce*, Attorney for Respondents, 50 Church Street, New York, N. Y.

New York, December 18, 1922.

[fol. 1685] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF DEFENDANT CHICAGO AND NORTH WESTERN RAILWAY COMPANY—Filed December 18, 1922

Comes now the Chicago and North Western Railway Company, one of the defendants in the above entitled cause, by its attorney, and for answer to the complaint of the complainants heretofore filed in the above entitled cause, says:

That this defendant, the Chicago and North Western Railway Company, adopts as and for its answer to said complaint, and to each and every of the allegations and averments therein contained and set forth, the answer filed or to be filed in said cause by the Chesapeake & Ohio Railway Company, one of the other defendants named in said complaint, and this defendant prays that it may have and be accorded all of the rights and privileges of said answer so filed or to be filed by said the Chesapeake & Ohio Railway Company as fully in all respects as though the same were set forth at length herein.

John H. —, Attorney for Defendant Chicago and North Western Railway Company.

Chicago, December 14, 1922.

[fol. 1686] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE CHESAPEAKE AND OHIO RAILWAY COMPANY—
Filed December 18, 1922

The Chesapeake and Ohio Railway Company, being among the defendants named in this proceeding, for answer thereto respectfully states:

I, II, III, IV, V, VI

This defendant is without information as to the allegations contained in Articles I, II, III, IV, V, and VI.

VII

This defendant admits that it is a common carrier subject to the provisions of the Act to Regulate Commerce, approved February 4th, 1887, and Acts amendatory thereof and supplementary thereto.

VIII

This defendant notes the allegations contained in Article VIII.

IX

This defendant asks for proof as to the allegations contained in Article IX.

X

For greater accuracy, this defendant refers to its tariffs on file with your Honorable Commission, as provided by law, as full answer to the allegations contained in Article X.

[fol. 1687] XI, XII

This defendant denies the allegations contained in Articles XI and XII.

XIII

(1) For greater accuracy, this defendant refers to its tariffs on file with your Honorable Commission, as pro-

vided by law, as full answer to the allegations contained in Paragraph (1) of Article XIII.

(2) This defendant denies the allegations contained in Paragraph (2) of Article XIII.

XIV

This defendant denies the allegations contained in Article XIV.

And now, having fully answered, this defendant respectfully prays that the complaint as to it be dismissed.

The Chesapeake and Ohio Railway Company, by G. J. —, Freight Traffic Manager.

[fol. 1688] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Co.—Filed December 22, 1922

This defendant admits the existence of the complainants as alleged in the complaint. This defendant also admits it is a common carrier and is subject to the provisions of the Interstate Commerce Act.

Further answering said complaint, this defendant denies that the rates complained of are in any manner or form unlawful.

Wherefore this defendant prays that the complaint be dismissed as to it.

Dated at Chicago, Illinois, December 19th, 1922.

Chicago, Milwaukee and St. Paul Railway Company,
By J. N. Davis.

[fol. 1689] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF ELGIN, JOLIET AND EASTERN RAILWAY COMPANY—
Filed December 21, 1922

The answer of the Elgin, Joliet and Eastern Railway Company to the complaint, herein respectfully shows:

First. Answering Sections 1, 2, 3, 4, 5 and 6. Has no knowledge of the incorporation or business of complainants, therefore, neither admits nor denies the allegations contained in Sections 1, 2, 3, 4, 5 and 6 of the complaint.

Second. Answering Section 7. Admits it is a common carrier engaged in the transportation of property wholly by railroad, including coal, between points in the states of Indiana and Illinois and as such common carrier is subject to the provisions of the Interstate Commerce Act, and all acts amendatory thereof and supplementary thereto, including the Transportation Act of 1920.

Third. Answering Section 8. Admits there may be a territory in the United States commonly known as the New River District, Pocahontas District, Tug River District and Winding Gulf District, wherein there may be large deposits of bituminous coal known as ~~semi~~-bituminous coal and popularly referred to as "smokeless coal," and that there may be mines in said territory wherein is mined and produced said semi-bituminous coal, which coal is used for various purposes, but has no knowledge of the competition of complainants in the mining and distribution of said coal.

[fol. 1690] Fourth. Answering Section 9. Has no direct knowledge of the location of complainants' mines, therefore, neither admits nor denies the allegations contained in Section 9 of the complaint.

Fifth. Answering Section 10. Admits that the Chesapeake & Ohio Railway Company may issue and file with the Interstate Commerce Commission numerous tariffs naming joint through rates on the group basis from coal operations located on its main line and branch lines in the New River District, to various points of destination, but this defendant has not checked same.

1051

Sixth. Answering Section 11. Has no knowledge of refusal to establish and put in force joint through rates on coal from complainants' mines on the Virginian Railway to interstate destinations as this line has no direct connections with the Virginian Railway and does not publish rates from their stations for their account, but denies that the rates now maintained from complainants' coal operations to the points of destination enumerated in said tariffs are excessive.

Seventh. Answering Section 12. Has no knowledge of the trackage contracts and operating agreements entered into by the Virginian Railway Company with the Chesapeake & Ohio Railway Company, therefore, neither admits nor denies the allegations contained in Section 12 of the complaint.

Eighth. Answering Section 13. Denies that coal operations located at or near St. Paul, Virginia and other originating stations on the Carolina, Clinchfield & Ohio Railroad to destinations in Central Freight Association Territory are accorded an undue and unreasonable preference and advantage to the undue, unjust and unreasonable prejudice and disadvantage of complainants' mines.

Ninth. Answering Section 14. Denies that it is necessary and desirable in the public interest that defendant carriers issue, publish and file with the Interstate Commerce Commission joint through rates from coal operations of complainants located on the line of railroad of defendant, the [fol. 1691] Virginian Railway Company, to said destinations, on the same basis as the rates applying from mines of complainants' competitors located on the Chesapeake & Ohio Railway in the New River District and demands strict proof.

Tenth. Answering Section 15. Denies that complainants have been subjected to rates for transportation which were and are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and unduly prejudicial in violation of Section 3 thereof.

Eleventh. Denies each and every allegation not herein specifically admitted or denied.

Wherefore, having fully answered, prays that the complaint may be dismissed.

Elgin, Joliet and Eastern Railway Company, by W.
L. —, Its Traffic Manager.

[fol. 1692] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE GRAND TRUNK WESTERN RAILWAY COMPANY,
THE DETROIT AND HURON RAILWAY COMPANY, THE PONTIAC,
OXFORD AND NORTHERN—Filed December 29, 1922

I, II, III, IV, V, VI

Defendants have no specific knowledge.

VII

Defendants admit.

VIII, IX, X, XI, XII, XIII, XIV, XV

Defendants aver that Tariffs on File with Interstate Commerce Commission will show the rates lawfully in effect and denies that so far as they participate in the traffic, the rates and charges are unjust and unreasonable in violation of Section I, and unduly prejudicial in violation of Section 3 of the Interstate Commerce Act.

Having answered as above the several allegations in this complaint, defendants pray that same be dismissed.

Grand Trunk Western Railway Company, the Detroit and Huron Railway Company, the Pontiac, Oxford and Northern Railway Co., by N. L. N—, Its Freight Traffic Manager.

Chicago, Ill., December 21, 1922.

[fol. 1693] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF CHICAGO, KALMAZOO & SAGINAW RAILWAY COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, INDIANA HARBOR BELT RAILROAD COMPANY, THE KANAWHA & MICHIGAN RAILWAY COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY, THE TOLEDO & OHIO CENTRAL RAILWAY COMPANY, THE ZANESVILLE & WESTERN RAILWAY COMPANY—Filed December 26, 1929

Answering the complaint in the above entitled proceeding, these defendants admit, subject to verification from published tariffs on file with this Commission, the rates and charges therein set forth, but deny that the same are unjust, unreasonable, discriminatory or unlawful in any respect, deny that complainants are entitled to any relief in the premises, and pray that the complaint may be dismissed.

Clyde Browry, Attorney for Above-named Defendants, 1110-466 Lexington Avenue, New York City.

Dated December 22, 1922.

jm.

[fol. 1694] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY—Filed December 23, 1922

Comes now the Minneapolis & St. Louis Railroad Company, one of the defendants herein, and for its separate answer to complainants' complaint, states:

I

This defendant admits the allegations of paragraphs one to seven inclusive of said complaint.

II

Except as hereinbefore specifically admitted, this defendant denies the allegations of the complaint.

Wherefore this defendant prays that the complaint herein be dismissed.

M. M. Joyce, C. W. Wright, Attorneys for Defendant,
514 Met. Life Bldg., Minneapolis, Minn.

[fol. 1695] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF DEFENDANT THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY—Filed December 26, 1922

I

It is without information concerning the allegations of Paragraph I and it leaves complainant to its proof thereof.

II

Defendant admits that it is a common carrier engaged in interstate commerce.

III

For answer to all allegations herein purporting to state freight rates, defendant refers to the published tariffs themselves as affording the only true answer thereto. Defendant denies that the rates herein complained of, or any of them, are in violation of the Act to Regulate Commerce, as specifically alleged. Defendant denies that complainant is entitled to the relief prayed for, or to any part thereof, or to any other or further relief, or to any relief whatsoever.

Wherefore, having thus fully answered, defendant prays to be dismissed.

The Chicago, Rock Island and Pacific Railway Company, by A. B. Enoch, Its Attorney.

[fol. 1696] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF SOUTHERN RAILWAY COMPANY, KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY AND CHESAPEAKE STEAMSHIP COMPANY—Filed January 4, 1923

For answer to the complaint, these respondents say:

I

Answering paragraphs 1 to 6 of the complaint, inclusive, these respondents have no knowledge or information sufficient to enable them either to affirm or deny the allegations contained therein, and crave strict proof thereof.

II

Answering paragraph 7 of the complaint, these respondents admit the allegations contained therein.

III

Further answering said complaint, these respondents ask that reference may be had to the tariffs mentioned therein for a correct statement of the rates referred to and complained of in said complaint.

IV

Further answering said complaint, these respondents deny that they or any of them have violated or are violating Sections 1 or 3 of the Act to Regulate Commerce as [fol. 1697] amended, as alleged in the complaint, or that anything done or omitted by them or any of them, with respect to the subject matter of the complaint, is in violation of law, or that they or any of them should be subjected to any adverse order; and these respondents deny that complainants are entitled to the relief prayed or any other relief. Each and every allegation in said complaint not hereinbefore admitted, is hereby specifically denied.

And, having fully answered, these respondents pray that the complaint be dismissed.

Charles J. Rixey, Counsel for Respondents.

Washington, D. C., January 2, 1923.

[fol. 1698] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF THE NORFOLK & WESTERN RAILWAY COMPANY—
Filed January 17, 1923

For answer to said petition respondent says as follows:

Respondent is without information at this time enabling it either to admit or deny the correctness of all the allegations contained in said petition, and assuming that its co-defendants more directly interested will make detailed answer thereto, deems such answer on its behalf unnecessary. But respondent denies that it has participated in subjecting complainants, or any of them, to the payment of freight rates or charges which were or are unjust, unreasonable, unjustly discriminatory, unduly prejudicial or preferential, or in any way in violation of any of the provisions of the Interstate Commerce Act.

Accordingly respondent denies that complainants are entitled to the relief prayed for, or any other relief, or that respondent should be subjected to any adverse order whatever.

And, having fully answered, respondent prays to be hence dismissed, etc.

Norfolk & Western Railway Company, by D. L.
Younger, Commerce Attorney. P.

Washington, D. C., January 16, 1923.

[fol. 1699] IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence

Mr. Bronson offers the answer of the Chesapeake and Ohio Railway Company.

Judge Waddill: Gentlemen, in connection with the introduction of this testimony, we have reached this conclusion: that we will hear it and reserve for future determination what shall be done with it. To exclude it without hearing

it might be prejudicial, and we will let it be introduced with that understanding and will so state in the order that will be entered in the case.

Assistant Attorney General Wheat: Then, if the Court please, I suppose it will be noted that it is taken subject to our objection and exception.

C. H. Hix was duly sworn and testified as follows:

Direct examination.

By Mr. Carmalt:

My name is C. H. Hix, Norfolk, Virginia. I am President of the Virginian Railway. I came up through the operating department of the Norfolk and Western Railway, occupying the positions of agent, operator, dispatcher, chief dispatcher, train master. I was with that company for nineteen years. I went to the Seaboard in 1900 and worked up from Train Master to Vice-President in charge of operation; I was there twelve years. I then went to the Norfolk and Southern as its President and remained there two years. Then I retired from railroad work until 1918 when I was drafted and made Master of Hampton Roads Ports, in which position I had charge of the Virginian Railway's property, and then I continued with the rail- [fol. 1700] way after the property was handed back by the Government, as Vice-President in charge of operation. I became President on May 2nd of this year.

The Virginian Railway's owners have agreed to a lease of the property to the Norfolk and Western for ninety-nine years. This has been ratified by the Directors of both Companies and approved by the stockholders of the Norfolk and Western Railway Company, and a meeting of the Virginian's stockholders will take place tomorrow to pass upon the subject. That lease is subject to ratification by the stockholders of both Companies and to the approval of the Interstate Commerce Commission. Approval will not be sought until after the meeting tomorrow of the Virginian's stockholders.

I am familiar with the publication of tariffs by the Norfolk and Western Railway in compliance with the order of the Commission here involved, which have been filed to become effective on June first.

As to the simplicity and adequacy of operation via Matoaka and the Norfolk and Western Railway, the Virginian Railway has been constructed for the movement of traffic eastbound, and with one exception, a grade of 2.07 per cent from Elmore to the top of Clarke's Gap Hill, as we call it, has a grade of two-tenths of one per cent, for the handling of low-grade traffic.

Elmore is an assembling center for coal from that field. It is eighteen miles from Elmore to Matoaka where we have physical connection with the Norfolk and Western Railway, and we have a fourteen mile grade of 2.07 per cent. But we have begun with the electrification of that, and we will be in shape to begin operation over this grade with electric motors in the latter part of the year, which will simplify that operation very much. Therefore it is very much more economical to handle coal eastbound than westbound.

Radiating from Elmore, the line of the Virginian single-tracks to the west to Mullens and from Mullens to Deep Water. Eastbound it double-tracks Mullens to Matoaka, [fol. 1701] and we are installing automatic signals, and when they are in operation we will be able to move two full tonnage trains each way over that grade.

The report of the Commission recites the operating conditions between Elmore and Deep Water, and states that there are three grades with a grade lift not differing very considerably from the lift going up Clarke's Gap. From an operating point of view the difference between the two operations is this: The left operation between the top of Clarke's Gap and Deep Water is very slight, but moving eastbound we only have one pusher grade. These pushers lay over at Elmore where we have engine facilities. Moving westbound we have three grades, 5, 7 and 11, that would require pusher engines to get a full tonnage train over, and it would necessitate providing pusher terminals at each one of these grades, men to take care of the engines, such as engine watchmen and cleaners, the men usually used to maintain engines; or would necessitate three terminals instead of one and three sets of pushers instead of one.

From the point of view of operating costs and operating facilities, I prefer the eastbound operation in handling my traffic.

Cross-examination.

By Mr. Bronson:

Witness Hix: I testified before the Commission in the Wyoming Coal Company case, or the Gulf Coal Company case, which case gave rise to this proceeding. I did not testify in that case with reference to the proposed route by Matoaka for the movement of coal to the west. That was never mentioned in the case. That has not exactly all been started since the proposed lease of the Virginian to the Norfolk and Western. The electrification made delivery to the Matoaka gateway very much more desirable than before because of economy. So far as I know it was not mentioned in any way in the proceeding before the Commission which gave rise to this proceeding.

[fol. 1702] I am not familiar with what the Interstate Commerce Commission held in Consolidation of Railways, Docket 12964, with respect to System No. 8 and System No. 7. I am aware that in the tentative report on the consolidation of railways the Virginian was to be consolidated with the Chesapeake and Ohio, and not the Norfolk and Western.

Q. Are you not also aware of the fact that Professor Ripley in his recommendations to the Commission recommended that the Virginian be assigned to the Norfolk and Western, and the Commission took it away from the Norfolk and Western and gave it to the Chesapeake and Ohio? Is that true?

A. Mr. Bronson, Professor Ripley made two or three recommendations with regard to it. He talked to us all. I am not familiar with the action of the Commission. That is a matter of record in I. C. C. 459 and 460.

By the Court:

Witness: It is sixty miles from Elmore to Deep Water and eighteen miles from Elmore to Matoaka.

Witness was then excused.

J. E. CRAWFORD was duly sworn and testified as follows:

Direct examination.

By Mr. Carmalt:

Witness: My name is J. E. Crawford, Roanoke, Virginia. I am General Manager of the Norfolk and Western Railway. I have been ten years engineer, ten years Chief Engineer, one year Assistant General Manager, and one year General Manager of the Norfolk and Western Railway.

On the assumption that the tonnage of coal moving to the west that may be expected from our through rates and joint rates will aggregate somewhere between 1,000,000 and 2,000,000 per annum the Norfolk and Western has the following facilities at Matoaka and beyond for the handling this traffic. We have at Matoaka two tracks, each loading about [fol. 1703] eighty cars, in addition to our running track, on which these cars can be received. That is about sixteen miles from our main line at Bluestone. From Bluestone we have practically a double-tracked railroad on water grade all the way to the west.

The line running from Matoaka to Bluestone is what I would call a first class branch. It is laid with 100-pound rail, or heavier than that, I think there are some 130-pound rails; good tie condition, stone ballast, good bridges, concrete masonry; it is a first class branch.

The yard development on the branch for handling and assembling trains is as follows: We have, as I mentioned, two tracks at Matoaka, and about eleven miles below Matoaka we have a yard with three additional tracks and it is now being enlarged with three more tracks, where we assemble. We have electrification in that yard and that is where we make up our westbound trains for both eastbound and westbound movement. Our westbound cars are handled from Cliff to Flat Top yards, about eight miles from Cliff on the main line, and we pick them up and haul them to Bluestone. The train is made up at the Bluestone yards.

We are now handling on that branch, during the time when the coal business is fair, about 300 50-ton cars a day. Our ratings are all in 50-ton cars, and we handle about 300 a day off that branch, 300 loaded off and 300 empties on. That operation could be enlarged with the present facili-

ties to handle 100 to 150 cars more a day. The facilities of the interchange and of the branch are sufficient adequately to take care of that additional tonnage now. We have contracts for two additional tracks at Matoaka, and those two tracks will be finished by the first of August, which have been contracted for since the order in this case was handed down, that is, they were contracted for three or four days ago. Cliff Yards is eleven miles from Matoaka.

It is quite probable, if the lease of the Virginian is consummated, that we would extend the electrification up to Matoaka.

The equipment of the Norfolk and Western is interchangeable with that being installed by the Virginian to this extent: We can operate our locomotives on their line or their locomotives on our line. The locomotives are not the same, but they use the same current and can operate on either line.

Cross-examination.

By Mr. Bronson:

Witness: I did not testify before the Interstate Commerce Commission in the proceeding that gave rise to this suit, with respect to the route via Matoaka. I did testify in the consolidation case that was referred to in the questions to Mr. Hix. I imagine the record will show that I testified in that case that coal could not be handled economically via Matoaka from the Virginian line, though I can't say definitely what my testimony was.

By Mr. Farrell:

Witness: I can't say that at the time of the hearing before the Commission of the Wyoming Coal Company case any coal was moving west from the Virginian over the Norfolk and Western Railway via Matoaka. I don't know what the date of that case was, how long ago it was. I don't think there is any moving today west from the Virginian over the Norfolk and Western, or has in the past.

By Mr. Carmalt:

Witness: In the consolidation hearing of which I have spoken, the question I had under consideration was the

comparison of the route by Matoaka and a route down the Guyon River from Mullens or Elmore.

Witness was then excused.

[fol. 1705] S. M. ADSIT was duly sworn and testified as follows:

Direct examination.

By Mr. Carmalt:

Witness: My name is S. M. Adsit, of Norfolk, Virginia, I am and have been Traffic Manager of the Virginian Railway since March 1, 1920. Prior to that time I was for fifteen years General Freight and Traffic Agent of the St. Joseph and Grand Island Railway, St. Joseph, Missouri, I came to Virginia with the Virginian in May, 1907, and retained the position I held when I came until I was made General Traffic Manager.

During the period from 1907 until now I have had charge of arrangements for through routes and joint rates and tariff publications for the Virginian Railway.

We have never had any joint rates with the Chesapeake and Ohio on coal. There had been no coal handled until 1923 in connection with the Chesapeake and Ohio from the Virginian, except coal shipped from the Hot Coal (?) mines in West Virginia, which shipments began in May, 1923. It is my recollection that was after the testimony was taken before the Interstate Commerce Commission in the proceedings that is here involved. That coal has not been handled since May, 1923, on through billing from the Virginian to the Chesapeake and Ohio.

When the Virginian receives the coal, it is taken to Pemberton on a memorandum bill from the mine, but covered by revenue way bills that are made by the station agent at Tams carrying the charges up to Pemberton on the Virginian Railway. At Pemberton it is turned over to the Chesapeake and Ohio Railway and rebilled from the billing on the Virginian to the points of destination and the consignee shown on that billing.

The rates on the Virginian Railway from Hot Coal mines (?) are collected by the agent at Tams, and the agent pays the charges to the Virginian Railway.

When the coal moves out from Pemberton over the Ches- [fol. 1706] apeake and Ohio the billing does not carry any charges from the Virginian on it. There are no arrangements between the Virginian and the Chesapeake and Ohio for the publication of through rates and joint rates on coal.

I have had up with the Traffic Department of the Chesapeake and Ohio the question of the Virginian's authority to publish through rates over the Chesapeake and Ohio Railway and its connections to agree with the order here involved. We did have and still have complete authority to publish the rate, but we have been put on notice by the Chesapeake and Ohio that we must not use that concurrence in connection with coal rates; that they will furnish a separate concurrence covering rates on coal from the Virginian Railway to western points. If rates were published from local mines on the Virginian Railway, and not published from the joint mines, it would create fourth section violations and would be some injury to the joint mines.

I have with me the letter that was received from the Chesapeake and Ohio Railway in which I was put on notice not to use the concurrence I have. It is signed by Mr. E. D. Hotchkiss, Freight Traffic Manager, dated May 23, 1925. The letter is as follows (Reading):

"Richmond, Va., May 23rd, 1925.

File FTM. 3-430.

Mr. S. M. Adsit, traffic manager the Virginian Railway Co.,
Norfolk, Va.

DEAR SIR: Referring to previous correspondence in reference to the publication of rates on coal from Virginian Railway mines to western destinations made necessary by the Commission's report and order in Docket 14454:

Take notice that the Chesapeake and Ohio nonconcurs in the publication jointly by your company of the district rate from any joint mine served by the two companies for application via Deep Water or Pemberton either to a destination on the C. & O. Railway or to a destination beyond [fol. 1707] in which the C. & O. Railway would be an intermediate connection.

Also take notice that General Concurrence FX-3, No. 407, issued by this Company, is not to be cited in connection with any publication that may issue via the Deep Water or Pemberton route pursuant to this order, but in lieu thereof we will issue concurrence on form of FX-2 as soon as advised the number of tariffs on which you will require concurrence of this character and your assurance that such schedules omit all joint mines served by the two companies.

I am sending a copy of this communication to Mr. G. B. McGinty, Secretary of the Interstate Commerce Commission.

Yours very truly, E. D. Hotchkiss, Freight Traffic Manager.

Cy. to Mr. G. B. McGinty, Secty. Interstate Commerce Commission, Washington, D. C."

By Mr. Carmalt:

Witness: We have had no joint rates at any time with the Chesapeake and Ohio on coal. In the early days of the Virginian Railway, before it was completed through to tidewater, to enable the mines in West Virginia to ship, proportional rates were published to Deep Water to be billed beyond Deep Water. After the road was completed to tidewater those rates were withdrawn. After those rates were withdrawn, no coal was handled in connection with the Chesapeake and Ohio until the shipments in 1923.

It is true, as alleged in the amended bill of complaint, that tariffs have been filed by the Norfolk and Western Railway on behalf of the Virginian carrying rates running from Virginian mines to the west via Matoaka and the Norfolk and Western, and those are as shown in Exhibit 2 filed with the amended bill.

Judge Waddill: Is it your understanding that the letter from the Chesapeake and Ohio which you have just read contemplates carrying out the recent order of the [fol. 1708] Interstate Commerce Commission that is sought to be enjoined here, or not?

Witness: Literally, yes. It enables the Virginian to publish joint rates from mines that are specifically mentioned in the order; but it goes even further than that; it says

local mines, mines not served also by the Chesapeake and Ohio.

Judge Waddill: By the amended bill I understand that the Virginian is proceeding on the same line with the Norfolk and Western, carrying out the Commission's order?

Witness: Yes, sir.

Judge Waddill: So if the lease that is proposed is authorized, that condition will stand?

Witness: Yes, sir.

Judge Waddill: And if the injunction is granted here, it would be suspended as to the Chesapeake and Ohio?

Witness: Yes, sir.

By Mr. Carmalt:

Witness: I understand that the rates that are ordered by the order of the Commission are from specified mines of the complainant on the Virginian, and not from joint mines, or any other mines than the specific mines that are named in the order. If we were to publish rates from those mines, and not publish rates from other mines on the Virginian, including joint mines, there would be created fourth section violations of the Interstate Commerce Act. But the Chesapeake and Ohio letter does not preclude the publication of rates from those local mines.

Cross-examination.

By Mr. Bronson:

Witness: In the proceeding before the Commission which has given rise to this suit, the route by Matoaka and [fol. 1709] the Norfolk and Western was not mentioned by me. The question was raised, I believe, by one other witness. The consideration in that proceeding was more generally with respect to the rates via Deep Water; but that proceeding, so far as the Virginian was concerned, was in opposition to any western rates at all.

Q. Now in respect to the Wyoming Coal Company case, and the Gulf Coal Company case, is it not true that those cases involved rates only from local mines and not from joint mines?

A. No joint mines that I recall were mentioned in the complaint.

It is true that out of approximately 100 mines served by the Virginian, fifty per cent of the mines are served also by the Chesapeake and Ohio. It is true that in respect to the mines served by the Chesapeake and Ohio also, known as joint mines, they have rates both east and west, whereas the mines served by the Virginian have through rates, or joint rates, local rates, only eastbound, and any coal moved from those mines to the west would have to move, as the Commission said, subject to the establishment of rates between the Virginian and the Chesapeake and Ohio.

I have not received from Mr. Hotchkiss a new concurrence, that has been filed with the Interstate Commerce Commission, which permits us to publish joint rates from Chesapeake and Ohio junction points to the west. Mr. Hotchkiss says in his letter that such would be issued. I haven't had any appointments with Mr. Hotchkiss.

I can't say that the Chesapeake and Ohio Railway are not ready to comply with the order of the Commission. I have been notified that they were.

With respect to the rates of the Virginian by Matoaka and the Norfolk and Western, those are known as New River District rates. They put the local mines on a parity with the rates of joint mines.

I don't regard any rate west from the Virginian Railway just and reasonable. We put them in because we were obliged to, in the light of what we believed to be the fact, [fol.1710] that the Virginian Railway would be shortly turned over to the Norfolk and Western. Otherwise, I would have objected to putting them in by Matoaka. If we had put them in, we would not have necessarily put them via a route which would give us the long haul to Deep Water. Our best route for transportation expense is through Matoaka rather than Deep Water, for all the mines on the Virginian Railway.

It is largely true of Deep Water that for many mines the route via Matoaka involves an eastbound back haul before we start west; all our coal has to go by Deep Water before it starts west.

I would say that the question as to whether if the rates by Matoaka and the Norfolk and Western are fair and reasonable rates for the movement of Virginian Railway coal west, the same rates would be fair and reasonable rates for

the movement of coal via the Chesapeake and Ohio junction, depends on what the Virginian Railway got out of them in the way of revenue. I understand that the Commission holds that the rates are unduly low to C. F. A. territory. If the rates via Matoaka and the Norfolk and Western are fair and reasonable rates, I suppose they are fair and reasonable via Deep Water and Chesapeake & Ohio.

Q. If they are not fair and reasonable, why did you publish them?

A. Because we were required by the order of the Commission to put them in.

The order required that we publish western rates. The rates were put in, mark you, in compliance with that order, but we acted in a sense voluntarily because the Virginian was being turned over to the Norfolk and Western.

By Mr. Farrell:

Witness: I have the amended order of the Interstate Commerce Commission of May 19, 1925. Carrying out that order literally, applying the order to the mines specified in the order, it would bring about a discrimination between local and joint mines.

I understand the order is confined to the points that were [fol. 1711] in issue in the proceeding before the Commission, and that does not include all the points against which this discrimination, if a fact, exists.

There is nothing in that order of May 19th that prevents the Virginian from applying the rate which the Commission required it to apply from the points in issue, to other points which are discriminated against, provided there is discrimination.

The question as to whether the Virginian does not need to bring about discrimination between local mines on its lines, in complying with the Commission's order of May 19th, would depend somewhat on the attitude of our connection. The present attitude of the Chesapeake and Ohio would bring it about. If the Virginian has a free hand in order to comply with the order of May 19th, it can go ahead and remove the discrimination. With the concurrence of our connections they could put in rates from all the local mines as easily as the rates required by the Commission.

Mr. Farrell: If the Court please, on behalf of the Interstate Commerce Commission, this evidence having been received subject to the objection of counsel for the Commission, I wish to say that in my opinion it is incompetent, irrelevant and immaterial and has no bearing whatever upon the question whether the order of the Interstate Commerce Commission in this case is valid; and for those reasons I move that it be stricken from the record.

Mr. Spillman: If the Court please, as representing the intervening coal companies, I also desire to join in the same motion.

Mr. Bronson: If the Court please, we join in the motion to exclude complainant's testimony.

[fol. 1712] EVIDENCE INTRODUCED BY CHESAPEAKE AND OHIO
RAILWAY COMPANY

W. T. TAMS, JR., was duly sworn and testified as follows:

Direct examination.

By Mr. Bronson:

Witness: My name is W. T. Tams, Jr., Tams, West Virginia.

My connection with the proceeding before the Interstate Commerce Commission is that I am Vice President of the Gulf Coal Company and the President of the Wyoming Coal Company. Those two companies were the parties complainant in the proceeding which gave rise to this suit, as I understand it.

We complained before the Commission of the only rates available to us for western movement, which were a combination of rates from our mines——

The Court: Does not all of that appear in the record before the Interstate Commerce Commission?

Mr. Bronson: Yes, sir.

By Mr. Bronson:

Witness: We filed an objection to the petition of the Virginian Railway to reopen the case on the grounds that the Commission had considered the evidence, had arrived at its

decision, had issued its order, and that order we believed to be just and right one, and we objected to having the case reopened and the issue broadened, by including the question of rates by the Matoaka route. It had been suggested to us by counsel for the Virginian that we agree to accept the Matoaka route in satisfaction of the order, and we had declined that informal suggestion. So, as the record now stands before the Commission, the two complainants in this case refused to agree to broaden the issue so as to include the question of rates by the Matoaka route.

The Court: What did the Commission do about that? [fol. 1713] Did the Commission decline to reopen it?

Witness: Yes, sir.

Witness was then excused.

[fol. 1714] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed October 14, 1925

The Virginian Railway Company, Complainant, feeling itself aggrieved by the final order or decree of the District Court made and entered September 19, 1925, in the above-entitled cause prays an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file to which reference is made.

Complainant prays that a transcript of the record, proceedings and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

E. W. Knight, W. H. T. Loyall, James B. Carmalt,
Solicitors for the Virginian Railway Company.

[File endorsement omitted.]

[fol. 1715] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed October 14, 1925

Comes now the Virginian Railway Company, by its counsel and, in connection with its petition for appeal, files the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered September 19, 1925.

The District Court erred:

- I. In dismissing the bill of complaint on the merits.
- II. In refusing to enjoin the enforcement of the order of the Interstate Commerce Commission as prayed by complainant.
- III. In failing to find that the order of the Interstate Commerce Commission was not supported by evidence.
- IV. In failing to find that the Interstate Commerce Commission in making its order herein involved had acted without authority of law (in that the said Commission refused to find preliminarily whether or not the establishment of through rates and joint rates on coal to the West from Virginian Railway mines was in the public interest.
- V. In failing to find that the Interstate Commerce Commission acted arbitrarily in its failure and refusal to give consideration to the testimony of record before it tending [fol. 1716] to show that said establishment of through rates and joint rates was necessary or desirable in the public interest.
- VI. In failing to find that the Interstate Commerce Commission erred in its finding that the rates on coal to the West from Virginian mines were prejudicial.
- VII. In failing to find that the Interstate Commerce Commission erred in ordering the establishment of through rates and rates on coal to the West on the basis of the New River District rates maintained by the Chesapeake & Ohio Railway Company from mines on its line.

VIII. In failing to find that the Interstate Commerce Commission acted arbitrarily and without authority of law in finding unreasonable rates on coal from Virginian mines to the West that exceed the New River district basis of rates as applied by the Chesapeake & Ohio Railway Company from mines on its line.

IX. In failing to find that the Interstate Commerce Commission acted arbitrarily and without authority of law in establishing rates as reasonable rates within the meaning of Section 1 of the Interstate Commerce Act without giving consideration to testimony bearing upon the cost of service, the measure of the aforesaid district rates or other transportation conditions which affect the reasonableness of the value.

X. In failing to find that the Interstate Commerce Commission in making its order and amended order in Wyoming Coal Company, et al. versus Virginian Railway Company Docket No. 14454 and in Gulf Coal Company et al. versus Virginian Railway Company et al. exceeded its statutory authority and acted so arbitrarily as to render its order null and void.

E. W. Knight, W. H. T. Loyall, James W. Carmalt,
Solicitors for the Virginian Railway Company.

[File endorsement omitted.]

[fol. 1717] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—October 14, 1925

In the above entitled cause, The Virginian Railway Company, Complainant, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, entered herein on September 19, 1925, and having also made and filed an assignment of errors, and having in all respects conformed to the statute and rules of Court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and citation made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings and papers on which said order or decree was made and entered to the Supreme Court of the United States.

Geo. W. McClintic, United States District Judge.

Edmund Waddill, Jr., United States Circuit Judge.

Dated this 14th October, 1925.

[fols. 1718 & 1719] Citation, in usual form, showing service on Ewing H. Scott et al., omitted in printing.

[fol. 1720] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTIFICATION OF APPEAL

To the above-named defendants and interveners:

You are hereby notified that the Virginian Railway Company will prosecute and appeal from the final order or decree of the District Court entered herein on September 19, 1925, in which you are parties defendant and interveners, respectively, to the Supreme Court of the United States, to reverse the order of the District Court which sustained the order of the Interstate Commerce Commission complained of in the original and amended bill filed herein. This notice is seasonably given that you may have full opportunity to determine your own course with respect to your appeals.

E. W. Knight, W. H. T. Loyall, J. W. Carmalt, Solicitors for the Virginian Railway Company.

Service of a true copy of the foregoing notice is hereby acknowledged, this 15th day of October, 1925.

[fol. 1721] Blackburn Esterline, Assistant to the Solicitor General for the United States. 10/17/1925.
P. J. Farrell, Solicitors for the Interstate Commerce Commission. W. S. Bronson, Solicitors for the Chesapeake & Ohio Railway Company. Ewing H. Scott, Solicitors for the Interveners. Robert S. Spilman, Sol. for Gulf Coal Company, Intervener.

[fol. 1722] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

To the Honorable H. B. Lee, Attorney General of the State of West Virginia:

You are hereby notified that the Virginian Railway Company, complainant in the above entitled cause, has taken an appeal from the final order or decree of the District Court to the Supreme Court of the United States and that the order allowing the appeal makes the same returnable within thirty (30) days from the date of the order.

This notice is given you pursuant to Urgent Deficiencies Act, October 22, 1913 (38 Stat. L. 221).

E. W. Knight, W. H. T. Loyall, James W. Carmalt,
Solicitors for the Virginian Railway Company.

I hereby acknowledge receipt of a copy of the above no-
[fol. 1723] tice this 15th day of October, A. D. 1925.

Howard B. Lee, Attorney General.

[fols. 1724 & 1725] Bond for costs for \$1,000.00, approved and filed October 15, 1925, omitted in printing.

[fols. 1726 & 1727] Bond on appeal for \$5,000, approved and filed October 15, 1925, omitted in printing.

[fol. 1728] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPUE FOR TRANSCRIPT OF RECORD

To the Clerk:

Please prepare transcript of the record in the above-entitled cause in the matter of an appeal of the Virginian Railway Company, complainant, and include therein, in the order given below, the following matter, viz:

1. Bill of Complaint and amended bill of complaint with exhibits attached thereto.
 2. Answer of the United States of America.
 3. Answer of the Interstate Commerce Commission.
 4. Answer of the Chesapeake & Ohio Railway Company.
 5. Intervening petition of Gulf Coal Company, et al.
 6. Motion of Intervening Coal Companies to dismiss.
 7. All orders and journal entries in their appropriate order.
 8. Abstract of testimony of C. H. Hix, J. E. Crawford, S. M. Adsit and W. T. Tams, Jr., attached hereto.
 9. Record before Interstate Commerce Commission in Gulf Coal Co. et al. vs. Virginian Railway Co. et al., I. C. C. Docket No. 13832 and in Wyoming Coal Company et al. vs. Virginian Railway Company, et al. I. C. C. Docket No. 14454.
 10. Final order and decree entered September 19, 1925.
 11. Petition for appeal.
 12. Assignment of errors.
 13. Order allowing appeal.
- [fol. 1729] 14. Citation.
15. Notice of appeal to Attorney General of West Virginia.
 16. Appeal bonds.
 17. Præcipe for record.

E. W. Knight, W. H. T. Loyall, James W. Carmalt,
Solicitors for the Virginian Railway Company.

Service of a copy of the within praecipe for record is hereby admitted and acknowledged this 15 day of October, A. D. 1925.

Ewing H. Scott, W. S. Bronson, Solicitors for All Appellees, Ewing H. Scott, Solicitor for Interveners. Robert S. Spilman, Sol. for Gulf Coal Company, Intervener. Blackburn Esterline, Assistant to the Solicitor General for the United States. 10/17/25. P. J. Farrell, for Interstate Commerce Commission, Appellee.

[fol. 1730] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR CROSS-APPEAL BY UNITED STATES AND INTERSTATE COMMERCE COMMISSION—Filed October 17, 1925

United States of America and Interstate Commerce Commission, defendants, feeling themselves aggrieved by the following paragraphs two (2) and three (3) of the final order or decree of the District Court made and entered September 19, 1925, viz:

2. The Complainant indicating an intention to appeal from this decree, and the Court being of opinion from all the evidence in the case that irreparable damage will result to the Complainant pending such appeal if this decree shall be reversed on appeal, it is further ordered, that the United States of America, the Interstate Commerce Commission, and The Chesapeake and Ohio Railway Company be temporarily restrained from making effective the order of the Interstate Commerce Commission mentioned in the Bill of Complaint and the Amended Bill in this case, viz., orders entered on March 10, 1925, and an amended or revised order entered on May 19, 1925, in two proceedings then pending before said Commission, viz., Gulf Coal Company et al. vs. Virginian Railway Company et al., I. C. C. Docket No. 13382 and Wyoming Coal Company et al. vs. Virginian Railway Company et al., I. C. C. Docket No. 14454, pending the perfecting of such appeal by the Complainant to the Supreme Court of the United States within thirty days from this

date, and upon the perfecting of such appeal thereafter until the determination of the same by said Supreme Court, unless such restraining order shall be sooner set aside by said Supreme Court.

3. That the Complainant shall within thirty days from the date of this order, pending such appeal, enter into a proper injunction bond before the Clerk of this Court with security approved by the District Judge of this Court in the penalty of (\$5,000) Five Thousand Dollars, conditioned according to law, which said bond is to be in addition to the [fol. 1731] usual appeal bond to cover costs of the appeal in the penalty of (\$1,000) One Thousand Dollars.

pray a cross-appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the foregoing paragraphs 2 and 3 erroneous are set forth in the assignment of error on file to which reference is made.

They pray that a transcript of the record, pleadings, and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Elliott Northcott, United States Attorney, Southern District of West Virginia. Blackburn Esterline, Assistant to the Solicitor General. P. J. Farrell, Solicitor for Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 1732] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS ON CROSS-APPEAL.—Filed October 17,
1925

United States of America and Interstate Commerce Commission, defendants, now come, by their respective counsel, and in connection with their petition for cross-appeal file the following assignment of error on which they will rely on their cross-appeal to the Supreme Court of the United

States from paragraphs 2 and 3 of the final order or decree of the District Court entered September 19, 1925.

The District Court erred in restraining enforcement of the Commission's orders of March 10 and May 19, 1925, pending appeal to and determination of the appeal by the Supreme Court of the United States.

Wherefore, defendants, and each of them, pray that paragraphs 2 and 3 of the final order or decree entered September 19, 1925, be reversed, annulled, and set aside, with directions that the restraining order shall be forthwith dissolved, and for such other and further order as may be appropriate.

Elliott Northcott, United States Attorney, Southern District of West Virginia. Blackburn Esterline, Assistant to the Solicitor General. P. J. Farrell, Solicitor for Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 1734] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING CROSS-APPEAL—October 17, 1925

In the above-entitled cause, United States of America and Interstate Commerce Commission, defendants, having made and filed their petition praying a cross-appeal to the Supreme Court of the United States from paragraphs 2 and 3 of the final order or decree of the District Court made and entered September 19, 1925, and having also made and filed an assignment of error, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the cross-appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the Clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said order or decree was made and entered to the Supreme Court of the United States.

Geo. W. McClintic, United States District Judge.

[fol. 1735] Citation on cross-appeal, in usual form, showing service on E. W. Knight, omitted in printing.

[fol. 1736] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1737] IN UNITED STATES SUPREME COURT

ORDER EXTENDING TIME FOR FILING TRANSCRIPT—Filed
November 19, 1925

On motion of The Virginian Railway Company, a corporation, appellant, and also on motion of the United States of America and the Interstate Commerce Commission, cross-appellants, and for good cause shown and appearing to the Court, it is ordered that the time for filing the transcript of the record upon the appeal of The Virginian Railway Company and the cross-appeal of the United States of America and the Interstate Commerce Commission to the Supreme Court of the United States be, and the same is, hereby enlarged and extended for the period of ninety (90) days from the date hereof.

November 13, 1925.

Geo. W. McClintic, U. S. District Judge.

[fol. 1737a] [File endorsement omitted.]

[fol. 1738] IN UNITED STATES SUPREME COURT

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
BY APPELLANT TO PRINT THE ENTIRE RECORD—Filed Jan-
uary 27, 1926

The Appellant in the above-entitled cause will rely on the following points on the appeal in this case:

The District Court erred:

I. In dismissing the bill of complaint on the merits.

II. In refusing to enjoin the enforcement of the order of the Interstate Commerce Commission as prayed by complainant.

III. In failing to find that the order of the Interstate Commerce Commission was not supported by evidence.

IV. In failing to find that the Interstate Commerce Commission in making its order herein involved had acted without authority of law (in that the said Commission refused to find preliminarily whether or not the establishment of through routes and joint rates on coal to the West from Virginian Railway mines was in the public interest.)

V. In failing to find that the Interstate Commerce Commission acted arbitrarily in its failure and refusal to give consideration to the testimony of record before it tending to show that said establishment of through routes and joint rates was not necessary or desirable in the public interest.

VI. In failing to find that the Interstate Commerce Commission erred in its finding that the rates on coal to the West from Virginian mines were prejudicial.

VII. In failing to find that the Interstate Commerce Commission erred in ordering the establishment of through routes and rates on coal to the West on the basis of the New River District rates maintained by the Chesapeake & Ohio Railway Company from mines on its line.

[fol.1739] VIII. In failing to find that the Interstate Commerce Commission acted arbitrarily and without authority of law in finding unreasonable rates on coal from Virginian mines to the West that exceed the New River district basis of rates as applied by the Chesapeake & Ohio Railway Company from mines on its line.

IX. In failing to find that the Interstate Commerce Commission acted arbitrarily and without authority of law in establishing rates as reasonable rates within the meaning of Section 1 of the Interstate Commerce Commission Act without giving consideration to testimony bearing upon the

cost of service, the measure of the aforesaid district rates, or other transportation conditions which affect the reasonableness of the rate.

X. In failing to find that the Interstate Commerce Commission in making its order and amended order in *Wyoming Coal Company et al. versus Virginian Railway Company*, Docket No. 14454, and in *Gulf Coal Company et al. versus Virginian Railway Company et al.*, Docket No. 13832, exceeded its statutory authority and acted so arbitrarily as to render its order null and void.

The Appellant desires that the entire record in this case as certified by the Clerk of the District Court for the Southern District of West Virginia be printed.

E. W. Knight, W. H. T. Loyall, James W. Carmalt,
Attorneys for Appellant.

[fol. 1739a] [File endorsement omitted.]

[fol. 1740] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON BY CROSS-APPELLANTS—Filed February 1, 1926

United States of America and Interstate Commerce Commission, cross-appellants, will rely on the following point in brief and in oral argument on the hearing of their cross-appeal, viz:

Paragraphs (2) and (3) of the final decree of the District Court which restrained enforcement of the Commission's orders of March 10 and May 19, 1925, pending appeal to and determination of the appeal by this Court, are unwarranted by the facts and are contrary to law.

Blackburn Esterline, Assistant to the Solicitor General. P. J. Farrell, Solicitor for Interstate Commerce Commission.

[fol. 1741] [File endorsement omitted.]

Endorsed on cover: File Nos. 31,647, 31,648. S. West Virginia D. C. U. S. Term No. 281. The Virginian Railway Company, appellant, vs. The United States of America, The Interstate Commerce Commission, and The Chesapeake and Ohio Railway Company, et al. Term No. 282. The United States of America and The Interstate Commerce Commission, appellants vs. The Virginian Railway Company. Filed January 27th, 1926. File No. 31,647, 31,648.

(1353)

INDEX

REFERENCES TO OFFICIAL REPORTS.....	PAGE 2
JURISDICTION OF SUPREME COURT OF UNITED STATES	2
STATEMENT OF CASE.....	3
History of Virginian Railway Company.....	3-6
Description of Westbound Coal Rate Adjustment.....	6-10
Evidence Concerning the Reasonableness of the Rates from Virginian Mines	10-12
Evidence in Justification of Trackage Arrangements.....	12-14
Complaints Before Commission.....	14-23
ASSIGNMENTS OF ERROR.....	23-25
ARGUMENT	25-85
Summary	25-27
I. The failure of the Commission to find supporting facts in either its original or amended reports, and the ignoring by the Commission of facts established by the evidence in the case, forbid the Commission's conclusion that discrimination or prejudice within the inhibition of the Interstate Commerce Act has been practiced by Appellant. And since its action in this case the Commission has considered in identical cases the trackage agreements and operating arrangements attacked in the two proceedings here involved, and has found that they did not result in discrimination or prejudice.....	27-43
(a) Trackage Contracts	28-32
(b) Prejudice Due to Rates Published by the Chesapeake & Ohio and Norfolk & Western Railways	32-33
(c) Prejudice Found by Commission not Chargeable to Appellant.....	34-43
II. The Commission is without power to order the establishment of through routes and rates without first finding that the establishment of such rates and routes will be in the public interest. The Commission avowedly did not consider the evidence or make any finding in this regard, and the facts found by the Commission, together with those of record before the Commission and not disclosed by its report, preclude any finding that the through routes and rates will be in the public interest..	44-55
III. The evidence before the Commission does not support its findings that the rates on coal to the west from Virginian mines via the Chesapeake & Ohio are unreasonable to the extent that they exceed the New River District rates maintained by the Chesapeake & Ohio from mines on its own main and branch lines and connecting lines having no other outlet to the markets.....	55-71
IV. The action of the Commission in ordering Chesapeake & Ohio New River District rates applied for joint application from Virginian mines is arbitrary, not in the	

150255

	PAGE
public interest, and not supported by evidence sufficient to justify a finding that the rates applied from such mines are either unreasonable or unduly prejudicial....	71-73
V. (a) Rates to the west on the New River District level to substantially all of the destinations mentioned in the Commission's order from Virginian mines via the Norfolk & Western Railway Company established within the effective date of the order of the Commission constitute compliance with the order of the Commission and, therefore, the order should be set aside in so far as it requires through rates to be established via the Chesapeake & Ohio.....	73-78
(b) To permit the Commission's order requiring rates to the west to be established by way of the Chesapeake & Ohio as well as the Norfolk & Western would make an especially preferred class of the Virginian coal shippers, resulting in discrimination in their favor and prejudice against the Norfolk & Western and Chesapeake & Ohio coal shippers more flagrant than the alleged discrimination against the Virginian local mine shippers complained of in the proceedings before the Commission here involved.....	78-79
VI. The issuance of the order requiring the maintenance of the status quo pending the appeal was clearly within the powers of the court below.....	80-83
CONCLUSION	83

CASES CITED

	PAGE
Benton Coal Mining Co. v. C. B. & Q. R. R. Co., 63 I. C. C., 396..	14
Bituminous Coal to C. F. A. Territory, 46 I. C. C., 66.....	7, 56, 60
Boileau v. P. & L. E. R. R. Co., 22 I. C. C., 64; 24 I. C. C., 129....	9
Carnegie Steel Co. v. P. R. R. Co., 100 I. C. C., 353.....	56, 60
Campbell's Creek Coal Co. v. A. A. R. R. Co., 33 I. C. C., 558....	37
Cardiff Coal Co. vs. C., M. & St. P. Ry. Co., 13 I. C. C., 460.....	54
Chamber of Commerce of Milwaukee v. C., R. I. & P. Ry. Co., 15 I. C. C., 460	55
Central Railroad Co. of New Jersey v. United States, 257 U. S., 247	2, 32, 33, 41, 59, 81
Coal from Sewell Valley R. R. Stations, 58 I. C. C., 261.....	37, 70
Coal from W. Va. Mines, 59 I. C. C., 486.....	38, 70
Consolidation Coal Co. v. C. & O. Ry. Co., 60 I. C. C., 763.....	38
Cumberland Teleph. & Teleg. Co. v. Louisiana Pub. Serv. Com., 260 U. S., 212.....	83
Cunard Steamship Co. v. Mellon, 284 Fed. 891.....	84
Dering Mines Co. v. Director General, 62 I. C. C., 265.....	14
Florida East Coast R. R. Co. v. United States, 234 U. S., 167.....	59
Hood Coal Co. v. M. V. T. Co., 73 I. C. C., 54.....	51
Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C., 671.....	37, 70
Interstate Commerce Com. v. Louisville & N. R. Co., 227 U. S., 88	59
Interstate Commerce Com. v. Union P. R. Co., 222 U. S., 541....	59
Investigation and Suspension Docket 26 to 26C, 22 I. C. C., 604....	9, 57
Lackawanna Steel Co. v. Director General, 87 I. C. C., 383.....	62
Lake Cargo Coal Rates, 1925, 101 I. C. C., 513.....	9
McKell Coal & Coke Co. v. C. & O. Ry. Co., 78 I. C. C., 227.....	37, 70
National Fireproofing Co. v. Director General, 62 I. C. C., 49.....	51
Nelson Fuel Co. v. C. & O. Ry. Co., 83 I. C. C., 737; 96 I. C. C., 124	38, 66
Ohio-Michigan Coal Cases, 80 I. C. C., 663.....	9
Omaha & Council Bluffs Street Railway Co. v. I. C. C., 222 U. S., 582	81, 82
Philadelphia & R. R. Co. v. United States, 240 U. S., 334.....	33, 59
Pittsburgh Vein Operators of Ohio v. Pennsylvania Co., 24 I. C. C., 280	9
Ragland Coal Co. v. Virginian Ry. Co., 115 I. C. C., 147....	14, 31, 35, 43
Railroad Commissioners of Mont. v. D. & R. G. R. R. Co., 27 I. C. C., 522	63
Rates on Plaster and Gypsum Rock, 27 I. C. C., 67.....	55
Rates from Walsenburg Coal Field, 26 I. C. C., 85.....	70
Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C., 259.....	13
Riverside Coal Co. v. Director General, 68 I. C. C., 205.....	38
San Toy Coal Co. v. A. C. & Y. Ry. Co., 34 I. C. C., 93.....	9
Southern Ry. Co. v. Watts, 259 U. S., 576.....	83
St. Louis S. W. R. Co. v. United States, 245 U. S., 136....	2, 39, 40, 43, 46
Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co., 14 I. C. C., 364	54
Through Routes and Through Rates, 12 I. C. C., 163.....	44, 46
Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C., 493....	50
Tobacco from Ohio River Crossings, 73 I. C. C., 384.....	51
United States v. Merchants & M. Traffic Asso., 242 U. S., 178....	81
United States v. Illinois C. R. Co., 263 U. S., 515, .2, 10, 33, 36, 39, 40, 43	

	PAGE
United States v. Louisville & N. R. Co., 235 U. S., 314.....	59
Western Paper Makers' Chem. Co. v. United States, 70 L. ed. (Adv. 504)	59
Wichita Board of Trade v. A., T. & S. F. Ry. Co., 25 I. C. C., 625	69
Winding Gulf Colliery Co. v. C. & O. Ry. Co., 115 I. C. C., 113,	14, 31, 35, 43

REFERENCES TO STATUTES

	PAGE
Sec. 1. Act of Feb. 4, 1887, as amended (24 Stat., 379; 34 Stat., 838; 36 Stat., 539; 41 Stat., 456).....	56
Sec. 3. Act of Feb. 4, 1887 (24 Stat., 379).....	27
Sec. 14. Act of Feb. 4, 1887, as amended (24 Stat., 379; 41 Stat., 456)	28
Sec. 15. Act of Feb. 4, 1887, as amended (24 Stat., 379; 34 Stat., 838; 36 Stat., 539; 41 Stat., 456).....	45
Act of Oct. 22, 1913 (38 Stat., 219).....	2
Sec. 262, Judicial Code (36 Stat., 1162).....	81

IN THE
SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1926.

No. 281
THE VIRGINIAN RAILWAY COMPANY, *Appellant*,
vs.
THE UNITED STATES OF AMERICA, THE INTERSTATE COM-
MERCE COMMISSION, AND THE CHESAPEAKE AND
OHIO RAILWAY COMPANY ET AL.

No. 282
THE UNITED STATES OF AMERICA AND THE INTERSTATE
COMMERCE COMMISSION, *Appellants*,
vs.
THE VIRGINIAN RAILWAY COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF WEST
VIRGINIA.

BRIEF FOR THE VIRGINIAN RAILWAY
COMPANY

This is an appeal from a decree of the District Court
of the United States for the Southern District of West
Virginia, constituted of three judges under the pro-

visions of the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 219, with one judge dissenting, refusing to enjoin an order of the Interstate Commerce Commission in the cases of Wyoming Coal Co. et al. vs. the Virginian Railway Company et al., I. C. C. Docket No. 14,454, and Gulf Coal Co. vs. same defendants, I. C. C. Docket No. 13,832.

REFERENCES TO OFFICIAL REPORTS

The Commission's original report appears in its published reports at 96 I. C. C., 359; the amended report at 98 I. C. C., 488. No opinion was rendered by the District Court.

The Court, being of opinion that irreparable damage would result to Appellant, granted a temporary restraining order pending the appeal to this Court, and from this portion of the order, a cross appeal was filed by the United States and the Interstate Commerce Commission.

JURISDICTION OF SUPREME COURT OF UNITED STATES

The order of the District Court, denying the prayer for a permanent injunction and dismissing the Bill, but granting a temporary restraining order to maintain the *status quo* pending appeal to this Court, was rendered September 19, 1925 (R. 84, 85).

The appeal from the order dismissing the bill is taken under the provisions of Urgent Deficiency Appropriations Act, October, 1913, 38 Stat. L. 219.

U. S. vs. Illinois Central R. R. Co., 263 U. S. 515.
Central R. R. Co. of New Jersey vs. U. S., 257
U. S. 247.

St. Louis Southwestern R. R. Co. vs. U. S., 245
U. S. 136.

STATEMENT OF CASE

The Commission, by its order, required the establishment of through routes and rates on coal to points in the west on the so-called New River District basis, which will be hereinafter explained. Prior to the original order of the Commission appellant did not join in the publication of any joint rates on coal to the west. The order also made certain requirements as to rates to the east which were eliminated in the amended order.

History of Virginian Railway Company

It will clarify the issues and record before the Court to describe first the location and history of Appellant's property, the rate policy under which it was developed and the economic soundness thereof—all shown by the record before the Commission.

The Virginian Railway extends from Norfolk, Va., to Deepwater, W. Va. (R. 709), and is constructed and was constructed as a low grade line to handle coal from the New River field of West Virginia to tidewater or its direct connections with carriers serving the Southeast and Northeast (R. 606). Ninety per cent of its traffic and eighty per cent of its revenue was derived (at the time of the hearing) from the bituminous coal traffic moving East (R. 617, 715). It is equipped with probably the heaviest locomotives and largest coal cars of any road in the United States, a substantial part of its coal equipment being of such size that it is not, and cannot be, handled in interchange with its connections (R. 332, 377). The prevailing and dominant trend of its traffic is eastbound, and for its long haul from

Princeton to Tidewater the ruling grade is only .2 of one per cent against the load, i. e., about 10 feet to the mile and compensated for curvature (R. 312).

Prior to the filing of the complaints with the Interstate Commerce Commission, Appellant had never held itself out to carry, and had never joined in the publication of joint rates on coal to the West (R. 320). There had never been any shipments moving to the West from local mines on its road, after the Virginian was completed to tidewater (R. 1065). There was a gateway open by which a shipment might be billed to the West on a combination rate composed of the local distance tariff rates of the Virginian and the district rate of its connections (R. 284).

The Virginian Railway was conceived and built primarily to furnish transportation from theretofore undeveloped coal fields in southern West Virginia to tidewater, though there was in contemplation from the beginning the completion by construction, or extension otherwise, of the railway to the Great Lakes and other Western outlets as and when the necessity and opportunity therefor should arise (R. 606, 607).

It was the Virginian policy to thoroughly develop the first unit or half of its projected railroad before starting the second, to render to its shippers the best possible service from the beginning, and to have the first unit contribute to the cost of the second and help carry it through the development period rather than to prolong its construction and development periods by a too ambitious program with consequent drain on the resources of its projectors, probable skimping of its equipment and other facilities, and inferior service to the shippers who had the confidence and enterprise to locate their operations on its lines, and on whose suc-

cess the success of the railway depended (R. 315, et seq.; 606, et seq.). The complainants and every other shipper locating upon its line did so with complete understanding of conditions and the expectation that the Virginian would indefinitely continue to handle only eastbound coal (R. 319). Until shortly before the institution of the first of these cases the coal shippers on the Virginian unanimously approved its policy of handling coal only to tidewater and eastern markets, and when the cases were heard a majority in number of its coal shippers, handling more than half of its coal tonnage, were still in accord with that policy and opposed to the contention of complainants herein (R. 467, et seq.).

The Virginian has been developed as conceived into a most effective agency for the transportation of coal (R. 315, et seq.). It has spent large sums of money in the construction, equipment and perfection of its transportation machine, and, with the exception of a brief war and post-war period, has rendered unsurpassed, perhaps, unequalled, service to its coal shippers, and that portion of the public whose needs it serves (R. 315, et seq.).

The record herein makes it clear that if a substantial portion of the Virginian coal tonnage is diverted from the flow of commerce which it was primarily intended to serve there will result a severe depletion of its presently sufficient car supply, a great impairment of its highly effective service to the eastern seaboard and the Southeast, serious drain upon its finances, and in general a jeopardizing of its prosperity and its life as an independent carrier (R. 324, et seq., 467, 475, 482, 489, 508, 518, 527, 581). And the record not only fails to show that the through routes and joint rates pro-

posed to be established are "necessary or desirable in the public interest," but it abundantly justifies the opinion of Commissioner Cox to the contrary.

The middle west, the territory reached by the routes ordered in the proceedings mentioned, is the most abundantly supplied with coal and hence the most highly competitive in this country. The coal producing states of the middle west themselves produce 200,000,000 tons of coal annually. They are surrounded on the East, South and West by coal producing states. And Pennsylvania, West Virginia, Kentucky and parts of Virginia and Tennessee were sending into this territory 60,000,000 tons annually at the time of the hearing before the Interstate Commerce Commission, to say nothing of coals from the other surrounding sections (R. 487 et seq.; 526 et seq.). It was conceded that coal produced on the Virginian Railroad did not supply any need in the western markets not already met by similar coal originating on other carriers publishing through rates to such markets.

Description of Westbound Coal Rate Adjustment

The new River rate group on the Chesapeake & Ohio and the Pocahontas and Tug River groups on the Norfolk & Western, so far as rates to the West are concerned, form a part of a general rate adjustment on coal well known in the Commission's reports as the Crescent adjustments (R. 281) because the Inner and Outer Crescent Rate groups lie on arcs drawn about the base rate group in Ohio, known as the Hocking District. Of the Crescent groups, Pittsburgh on the North lies among the groups that are nearest to the Western markets and the rate first established there

in relation to the Hocking district has been progressively extended through Maryland, West Virginia, Virginia, Kentucky and Tennessee to other high volatile coals originating at points involving much longer hauls. The Inner and Outer Crescent rates are made differentially higher than the rates from the Hocking (Ohio) district.

The New River, Pocahontas and Tug River rate groups, all in the Outer Crescent, are among the most distant from the western markets, the mines in those groups are in the low volatile coal fields of West Virginia, a portion of which are also served by the Virginian.

The Kanawha rate district lies west of the New River district and is one of the Inner Crescent groups. One of its most easterly points (with consequently longest haul on Western coal) is Deepwater, which is also the junction at which the Virginian coals would reach the rails of the Chesapeake & Ohio on the through route which the Commission's order prescribes.

The Crescent adjustment of rates was before the Commission comprehensively in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C. 66, and there the Commission said as to the inherent reasonableness thereof (p. 109):

In the light of all the evidence, the present rates from the Crescent to affected territory must, considering the circumstances and conditions of transportation and the value of the service, be regarded as below the level at which reasonable maximum rates might be fixed. The proposed increases from the Crescent would raise the average rates from the Crescent to \$1.84, yielding for the

average distance of 487 miles over all routes 3.78 mills per ton mile.

and considering the differentials of the Crescent rates over Ohio, it said (p. 122) :

Competitive conditions primarily, determined the measure of the differential between Pittsburgh and Ohio mines when it was originally fixed at 25c. As the lower districts in the Inner Crescent group were opened up and the coal they produced began to seek a market, competition caused the carriers serving them to apply the Pittsburgh basis of rates, the fundamental purpose being to put the newer districts in competition with the old; thus the Pittsburgh basis was gradually extended so that the newer districts were given the same rates as Pittsburgh to all points in central freight association territory west of the Sandusky-Galion line in practical, if not absolute, disregard of distance and all transportation conditions that ordinarily are taken into consideration in the making of rates. The West Virginia mines had not been opened up when the differential of 25c between Ohio and Pittsburgh was established. The differential was first made without regard to traffic from West Virginia and it was not foreseen that the differential would ultimately be applied as a uniform differential between the Ohio districts and such an extensive group as has resulted from the development of the mining districts in West Virginia, eastern Kentucky and Tennessee, and their inclusion in the Inner Crescent group. The differential as applied to the later developed districts of the Crescent may fairly be said, therefore, to take no account of transportation conditions or transportation costs. It was adopted by the lines serving the later developed districts of the Cres-

cent to meet commercial conditions and to put those coals in competition with Ohio coals and the coals from the northern part of the Crescent.

The low level and competitive character of the rates from the Crescent districts to the West have been uniformly recognized by the Commission in a long line of cases.

Boileau vs. P. & L. E. R. R. Co., 22 I. C. C. 640;
24 I. C. C. 129.

Investigation and Suspension Docket 26 to 26 C.,
22 I. C. C. 604.

Pittsburgh Vein Operators of Ohio vs. Penna.
Co., 24 I. C. C. 280.

San Toy Coal Co. vs. A. C. & Y. Ry. Co., 34
I. C. C. 93.

Ohio-Michigan Coal Cases, 80 I. C. C. 663.

Lake Cargo Coal Rates, 1925, 101 I. C. C. 513.

They are again described in the case here under attack, after all increases therein had been allowed (R. 57):

The comprehensive rate adjustment from the Inner and Outer Crescent groups to central territory is the outcome of competitive strain and stress through long periods of development. Whether commercial or carrier competition was the predominating factor can hardly be determined. In any event, the rates applicable under this adjustment have been so uniformly related, and that relation has endured so long, that they now afford a standard of reasonableness for rates from the same producing fields. Under the circumstances of this case relative reasonableness, rather than intrinsic reasonableness, becomes the important thing to be considered, and other criteria, such as ton mile earnings, fall into the background.

The Virginian having developed an efficient transportation machine to carry the coals of its shippers to markets in the East, amply sufficient to absorb all the coal mined in the district which it serves for years to come, felt that its rate policy, in avoiding participation in such a competitive rate structure to the West and in failing to offer to its coal shippers inducements to enter into a market so abundantly supplied and so highly competitive as the Western market, was fully justified so long as it avoided discrimination among the mines served by it. It is confidently asserted that the policy in this regard is justified by the language of this Court in *United States vs. Illinois C. R. Co.*, 263 U. S. 515, where it was said at page 522:

A carrier is entitled to initiate rates, and in this connection to adopt such policy of rate making as to it seems wise.

and more particularly at page 524:

To bring a difference in rates within the prohibition of Section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not justified by the costs of the respective services, by their values, or by other transportation conditions.

Evidence Concerning the Reasonableness of the Rates from Virginian Mines

The only evidence of the unreasonableness of the rates on coal to the West from Virginian mines that was placed before the Commission consisted of com-

parison of mileages to western destinations from such mines with those from mines in the Inner and Outer Crescents, including points on branch lines of the Chesapeake & Ohio and short lines connecting therewith as well as the Crescent rates from the Pocahontas and Tug River groups on the Norfolk & Western and on the Carolina, Clinchfield & Ohio (R. 241 to 329).

On the other hand the Appellant placed in evidence in justification of its rate policy facts showing:

1. That distance alone considered, the mines of the Virginian Railway are at a disadvantage of approximately 23 miles over the average from the New River group on the Chesapeake & Ohio and 64.7 miles greater than the longest haul from the Chesapeake & Ohio's Kanawha group (R. 667).

2. That the route of movement over the Virginian involves loaded hauls over very steep grades on its line between Mullens and Deepwater, including pusher service over three mountain divides so far separated that a separate pusher service must be maintained over each of said grades (R. 335, 739 [Ex. 23]).

3. That the grades on the Chesapeake & Ohio branch lines, while equaling or exceeding in severity the grades on the main line of the Virginian, are for the most part with the load, not against it as would be the case on Virginian traffic (R. 822).

4. That the extension of group rates to points on the Virginian will deplete the car supply of both carriers to the injury of shippers on both lines, including complainants (R. 467, 475, 482, 489, 508, 518, 527, 581).

5. That the cost of service on the Virginian line to the junction will be several fold higher than on any short line in the cases cited by the Commission (R. 390 et seq).

6. That large capital expenditures will be necessary to afford an efficient interchange and to strengthen the Virginian's line in order to carry the coal that it is estimated would move over the through rates prescribed (R. 334 et seq).

Much of this evidence is omitted from the report of the Commission, but it is submitted that these facts demonstrate conclusively that the operating conditions and cost of handling coal from the Virginian mines are wholly different and much more costly than are encountered by the Chesapeake & Ohio in moving coal either from its branch lines or from its short line connections from which it publishes the New River District basis of rates.

Evidence in Justification of Trackage Arrangements

The evidence of the appellant, giving the history of the trackage arrangements referred to and the practices under them, is shown at pages 405 to 421 of the Record, and no statement of it appears in either report of the Commission. The contracts under which the arrangements are entered into are filed as Exhibits 35 and 37 (R. 760, 797).

Certain mines served by the Virginian have always had direct connection with the Chesapeake & Ohio as well. Under trackage agreements between the Chesapeake & Ohio and the Virginian shown fully and referred to in the record, the Virginian has had for a long time the right to serve over the Chesapeake & Ohio tracks certain mines having connections only with those tracks and the Chesapeake & Ohio has had for a like time corresponding right to serve certain mines

on the Virginian tracks having connection only with those tracks.

As a matter of convenient practice and economy it has been the custom for one carrier to switch the cars of both to and from these mines reached by both by reason of trackage agreements, but each carrier reserves its right to give direct service as and when it shall so elect.

The mines enjoying service by both carriers, whether through direct connections as aforesaid or by reason of the trackage agreements aforesaid, are known as "joint mines" in contra-distinction to the mines on the two railroads mentioned which enjoy only the service of the railroad on which they are located, which are known as "local mines."

The joint mines have shipped to the western markets by way of the Chesapeake & Ohio as the originating carrier which publishes group rates to the west from these mines and all others on its line in the New River District (R. 156,702).

The joint mines have shipped to the east by either road as might be dictated from time to time by convenience or preference (R. 151, et seq).

The Virginian prior to the bringing of this suit had published no through rates on coal to western destinations, and neither the Virginian or the C. & O. publishes through rates by way of the line of the other to eastern destinations (R. 265, 320, 401).

Similar trackage arrangements have been approved by the Commission in

Ridge Coal Mining Co. vs. M. P. R. R. Co., 62
I. C. C. 259.

Dering Mines Co. vs. Director General, 62 I. C. C. 265.

Benton Coal Mining Co. vs. C. B. & Q. R. R. Co., 63 I. C. C. 396.

and those cases have been followed by the Commission in considering the trackage contracts here involved in two decisions rendered since the decision herein:

Winding Gulf Colliery Co. vs. C. & O. 115 I. C. C. 113.

Ragland Coal Co. vs. The Virginian Ry. 115 I. C. C. 147.

Complaints Before Commission

By its original bill of complaint in this proceeding, the Virginian Railway Company, Appellant here, sought to set aside and annul an order of the Interstate Commerce Commission, entered March 10, 1925, in proceedings before it brought by the Wyoming Coal Company and Gulf Coal Company, respectively, against Appellant, the originating carrier, and its connections, I. C. C. Dockets Nos. 14454 and 13832, the decision wherein appears in the published reports of the Commission at 96 I. C. C., 359, and by Exhibit attached to the bill.

The complaints in these cases before the Commission, alleged that the mines of complainants, which were local mines on Appellant's lines, were:

1. Prejudiced because of certain trackage and operating contracts between the Appellant and Chesapeake & Ohio Railway Company under which certain competing mines received the benefit of (a) joint service of these carriers and (b) through rates east and west on the Chesapeake & Ohio's New River District basis.

2. Prejudiced because geographically contiguous mines on the Chesapeake & Ohio and Norfolk & Western Railroads and certain railroads and branch lines connecting therewith received the benefit of the district rates of these carriers to the West while complainants were compelled to pay combination rates consisting of the Virginian's mileage distance rates to the junction with the Chesapeake & Ohio and the district rates beyond.

3. Charged unreasonable through rates because of said combination rate basis, but no allegation was made that either factor of such combination rate was unreasonable.

In its original report in the cases involved herein (96 I. C. C. 359), (R. 18), the Commission (p. 361), (R. 21-22), expressly refused to pass upon the question of the alleged prejudice resulting from the trackage agreements, the first of the issues above stated.

In the original report the Commission likewise failed to consider or make any finding with respect of the reasonableness *per se* of the combination rates, and the same is true of the amended report hereinafter mentioned.

Upon the second of the issues mentioned, the Commission found (96 I. C. C. 365), (R. 27), that "no sufficient reason from an operating standpoint appears why the mines of the Virginian should be kept on a different rate footing from mines on the branch lines of the Chesapeake & Ohio or independent short lines within the district," and (p. 368 R. 30), that "the rates on coal in car loads from complainants' mines on the Virginian to interstate destinations enumerated in the tariffs referred to in Appendix B of the Complaint will be for the future unreasonable and unduly prejudicial

to the extent that they may exceed the rates contemporaneously maintained from main and branch line points on the Chesapeake & Ohio in the New River District."

The original order of the Commission following the lines of the original report (R. p. 35-6) was as follows:

"These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, that the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before May 20, 1925, and thereafter to abstain from publishing, demanding or collecting rates for the transportation of coal, in car loads, from the above named complainants' mines at Hot Coal, Wyco, Jonben, Tracoal, Devils Fork, Corinne, and Fireco, W. Va. (all mines local to the Virginian Railway and served exclusively by it), to interstate destinations enumerated in the tariffs referred to in Appendix B of the Complaint in No. 14454 (the destinations being those on the C. & O. and its connections East and West to which the New River District rates of that carrier were published from mines on its line and on short lines dependent upon it for car supply), which exceeds the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, that said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before May 20, 1925, upon notice to this Commission and to the general public by

not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the transportation of coal, in carloads, from said complainants' mines at Hot Coal, Wyco, Jonben, Tracoal, Devils Fork, Corinne and Fireco, W. Va., to destinations enumerated in the tariffs referred to in Appendix B of the complaint in No. 14454 rates which shall not exceed the rates contemporaneously maintained on line traffic from points on the main and branch lines of the defendant The Chesapeake & Ohio Railway Company in the New River District to the same destinations (East and West).

And it is further ordered, that this order shall continue in force until the further order of the commission." (Explanatory words in parentheses ours.)

The order failed to specify any routes whereby the joint rates ordered should be established and so was open to the construction that such joint rates should be established by all possible lines of the defendants in the proceeding, e. g., rates to the west by both the Chesapeake & Ohio and Norfolk & Western railways.

In addition to rates to the west, the order also required joint rates to eastern destinations in Maryland and the District of Columbia reached by the Baltimore & Ohio and its connections, such destinations being covered by Chesapeake & Ohio tariff I. C. C. No. 9368.

The Virginian filed its petition for leave to reargue the cases before the whole commission and for the postponement of the effective date of the order to permit such reargument (R. 980), which petition was refused (R. 1007). Thereupon it filed its application for the postponement of the effective date of the order to

enable an application for an injunction to be made, which was likewise refused (R. 1026).

Shortly after the date of the Commission's order an agreement was reached between the Virginian and the Norfolk & Western Railway Company for a lease of the line of the former by the latter, and at or before the institution of this suit to enjoin the order of the Interstate Commerce Commission in the said proceedings, and largely because of the agreement upon said lease, the Virginian and Norfolk & Western Railway Company agreed to publish, and applied to the Commission for leave to publish on one day's notice, joint through rates from all mines on the Virginian to all points in the west covered by tariffs of the Norfolk & Western Railway and its connections, which include on a rate parity substantially all points reached by the Chesapeake & Ohio tariffs mentioned in the Commission's order, except points local to the Chesapeake & Ohio; so far as shippers were concerned the omissions were more than made up by the fact that the N. & W. tariffs covered points local to the N. & W. and a few points on connections not reached by the C. & O. on a parity of rates (R. 1024). The application for short-time permission within which to publish the N. & W. tariffs was granted and through rates on the district basis were thereupon published from Virginian mines via the Norfolk & Western and have ever since been operative (R. 1026, 1058 et seq.).

The Virginian also filed an application with the Commission for leave to publish on one day's notice joint through rates to the destinations in Maryland and the District of Columbia covered by C. & O. tariff No. 9368 by way of the Southern Railway, with which the Virginian connects at Alta Vista, Virginia, which route

would give the Virginian a haul greatly in excess of any haul it could have on coal moving to such destinations by way of the C. & O. or N. & W.

Upon the determination to establish joint rates to the west by way of the N. & W., the Virginian again petitioned the Commission, setting forth the proposed lease and declaring the intention to establish joint rates to the west by way of the N. & W. and praying that the said proceedings might be reopened, the effective date of the order postponed, and the order set aside or so modified as to permit satisfaction thereof by the establishment of joint rates by way of the N. & W. This petition was likewise refused (R. 1024).

Thereupon the Virginian filed its original bill in this cause, attacking and seeking to enjoin the enforcement of said order upon grounds which will be more fully discussed hereinafter, averring *inter alia* (section XIII of bill) that the Commission construed, erroneously as complainant averred, its order as requiring joint through rates to the west both by the N. & W. and the Virginian and joint through rates to destinations in the District of Columbia and Maryland by way of the C. & O. and N. & W. as well as by way of the Southern Railway.

The bill also challenged the right of the Commission to enter the order without a finding that the through routes, joint classifications and joint rates ordered were deemed by it to be "necessary or desirable in the public interest" and called attention to the fact that this question had been expressly excluded from consideration in the report of the Commission (96 I. C. C. 362) (R. 22).

The bill also challenged the right of the Commission to base its order upon alleged prejudice resulting from

rates, to which the Virginian was not a party, established by other carriers from mines on the lines of such other carriers, covering transportation in which the Virginian did not participate.

The bill also challenged the right of the Commission to find unreasonable, under Section I of the Interstate Commerce Act, rates upon a mere comparison with other rates which were affirmatively shown to be unreasonably low.

The original bill was filed on May 15, 1925, and on May 19th the Commission filed an amended report and entered an amended order in the two proceedings before it.

The amended report left unchanged the declaration of the Commission that it had given no consideration to the question whether joint rates to the west would be in the public interest (98 I. C. C. 491) (R. 51). It changed the ninth paragraph of the original report (96 I. C. C. 361) (R. 21), (98 I. C. C. 490) (R. 50), by adding a statement that from the junction of the C. & O. and Virginian railways at Deepwater, the C. & O. and Kanawha District rates to western destinations applied and ranged from 10 to 25 cents less than the New River District rates.

It changed the tenth paragraph of the original report (96 I. C. C. 361) (R. 21), (98 I. C. C. 490) (R. 50), by making slight changes in the verbiage, including the substitution of "operating arrangements" for "track-age rights" in the twelfth line, and by omitting at the end of the paragraph the declaration of the original report that "our findings will make it unnecessary to pass upon that issue."

The amended report also changed the twenty-first

paragraph of the original report by inserting the words italicized in the quotation which follows (96 I. C. C. 365) (R. 27), (98 I. C. C. 495) (R. 55):

“No sufficient reason from an operating standpoint appears why the mines on the *Virginian discriminated against as aforesaid* should be kept on a different rate footing from *other mines on the Virginian* or on the branch lines of the C. & O. or on independent short lines within the district.”

The amended report revised the last paragraph of the original report so as to read as follows (R. 57, 58):

“We find that the rates on coal, in carloads, from complainants’ mines on the Virginian to interstate destinations on the lines of defendants and named or designated in the tariffs, except C. & O. I. C. C. 9368, referred to in Appendix B of the complaint, will be for the future unreasonable and unduly prejudicial to the extent that they may exceed the *district rates on like traffic maintained by defendants from mines in the New River districts of the C. & O. and Virginian and the Pocahontas and Tug River districts of the Norfolk & Western, these districts forming part of which is generally referred to as the Outer Crescent.*”

C. & O. tariff I. C. C. 9368 is the tariff covering the destinations in Maryland and the District of Columbia above referred to and the italicized quotation was substituted for the following language of the original report: “The rates contemporaneously maintained from main and branch line points on the C. & O. in the New River District.” (R. 30.)

The amendments in the order (R. page 64-5), consisted of a recitation of the filing of the amended re-

port, the substitution of June 25th for May 20th as the effective date of the order, the exception of the destinations named in C. & O. tariff 9368, from the effect of the order, and substantially the same changes in the language of the order as were made in the language of the last paragraph of the amended report as above stated.

The Virginian Railway had no New River District rates westbound and the Norfolk & Western Railway Company's Tug River and Pocahontas Districts were brought in issue before the Commission only under the charge of discrimination and prejudice, which issue by its amended order the Commission eliminated.

Upon the filing by the Commission of its amended report and order, the Virginian filed its amended bill of complaint in this cause, showing the filing of the amended report and order, the changes made thereby in the original report and order, the establishment by the Virginian of through routes and joint rates on coal shipped in carloads by way of Alta Vista to the points in Maryland and the District of Columbia above referred to, and by way of Matoaka and the N. & W. Railway to all western destinations on or reached by way of the N. & W. Railway and its connections, and (because of the changes in the 10th and last paragraphs of the amended report) setting forth in detail the facts in respect of the trackage agreements, as hereinbefore set forth, and praying that the enforcement of the said amended order of May 19, 1925, should be enjoined.

The United States and the Interstate Commerce Commission filed separate answers and each answer answered both the original and amended bills. It should be noted that the answer of the Commission, by failure to deny the allegations of paragraph XIII of

the original bill, admitted that it construed the order of the Commission as requiring rates to western destinations to be established by both the N. & W. and the C. & O. railways.

It is the belief of Counsel for the Appellant that this case presents a rare instance of the Commission's undertaking, after the filing of a bill for an injunction against its order, to amend the order and to support the amended order by an amended report. And it is to be noted that two successive applications had been made to the Commission, one for re-argument and the other for reopening and rehearing the case, both of which were overruled before the bill was filed.

ASSIGNMENTS OF ERROR

The following assignments of error (R. 1079) will be relied on by Appellant.

That the District Court erred:

I. In dismissing the bill of complaint on the merits.

II. In refusing to enjoin the enforcement of the order of the Interstate Commerce Commission as prayed by complainant.

III. In failing to find that the order of the Interstate Commerce Commission was not supported by evidence.

IV. In failing to find that the Interstate Commerce Commission in making its order herein involved had acted without authority of law (in that the said Commission refused to find preliminarily whether or not the establishment of through routes and joint rates on coal to the West from Virginian Railway mines was in the public interest).

V. In failing to find that the Interstate Commerce

Commission acted arbitrarily in its failure and refusal to give consideration to the testimony of record before it tending to show that said establishment of through routes and joint rates was necessary or desirable in the public interest.

VI. In failing to find that the Interstate Commerce Commission erred in its finding that the rates on coal to the West from Virginian mines were prejudicial.

VII. In failing to find that the Interstate Commerce Commission erred in ordering the establishment of through routes and rates on coal to the West on the basis of the New River District rates maintained by the Chesapeake & Ohio Railway Company from mines on its line.

VIII. In failing to find that the Interstate Commerce Commission acted arbitrarily and without authority of law in finding unreasonable rates on coal from Virginian mines to the West that exceed the New River district basis of rates as applied by the Chesapeake & Ohio Railway Company from mines on its line.

IX. In failing to find that the Interstate Commerce Commission acted arbitrarily and without authority of law in establishing rates as reasonable rates within the meaning of Section 1 of the Interstate Commerce Act without giving consideration to testimony bearing upon the cost of service, the measure of the aforesaid district rates or other transportation conditions which affect the reasonableness of the rate.

X. In failing to find that the Interstate Commerce Commission in making its order and amended order in *Wyoming Coal Company et al. vs. Virginian Railway Company*, Docket No. 14454, and *Gulf Coal Company et al. vs. Virginian Railway Company et al.*, Docket No.

13832, exceeded its statutory authority and acted so arbitrarily as to render its order null and void.

ARGUMENT

Summary

I. The failure of the Commission to find supporting facts in either its original or amended reports, and the ignoring by the Commission of facts established by the evidence in the case, forbid the Commission's conclusion that discrimination or prejudice within the inhibition of the Interstate Commerce Act has been practiced by Appellant. (Assignments of Error Nos. I, II, III, VI, X.) And since its action in this case the Commission has considered in identical cases the trackage agreements and operating arrangements attacked in the two proceedings here involved, and has found that they did not result in discrimination or prejudice.

II. The Commission is without power to order the establishment of through routes and rates without first finding that the establishment of such rates and routes will be in the public interest. The Commission avowedly did not consider the evidence or make any finding in this regard, and the facts found by the Commission, together with those of record before the Commission and not disclosed by its report, preclude any finding that the through routes and rates will be in the public interest (Assignments of Error Nos. I, II, III, IV, V, VI, X.).

III. The evidence before the Commission does not support its findings that the rates on coal to the west from Virginian mines via the Chesapeake & Ohio are

unreasonable to the extent that they exceed the New River District rates maintained by the Chesapeake & Ohio from mines on its own main and branch lines and connecting lines having no other outlet to the markets (Assignments of Error Nos. I, II, III, VI, VII, VIII, IX, X).

IV. The action of the Commission in ordering Chesapeake & Ohio New River District rates applied for joint application from Virginian mines is arbitrary, not in the public interest, and not supported by evidence sufficient to justify a finding that the rates applied from such mines are either unreasonable or unduly prejudicial (Assignments of Error Nos. I to X, inclusive).

V. (a) Rates to the west on the New River District level to substantially all of the destinations mentioned in the Commission's order from Virginian mines via the Norfolk & Western Railway Company established within the effective date of the order of the Commission constitute compliance with the order of the Commission and, therefore, the order should be set aside in so far as it requires through rates to be established via the Chesapeake & Ohio (Assignments of Error Nos. I, II, X).

(b) To permit the Commission's order requiring rates to the west to be established by way of the Chesapeake & Ohio as well as the Norfolk & Western would make an especially preferred class of the Virginian coal shippers resulting in discrimination in their favor and prejudice against the Norfolk & Western and Chesapeake & Ohio coal shippers more flagrant than the alleged discrimination against the Virginian local mine

shippers complained of in the proceedings before the Commission here involved.

VI. The issuance of the order requiring the maintenance of the status quo pending the appeal was clearly within the powers of the court below.

I

The failure of the Commission to find supporting facts in either its original or amended reports, and the ignoring by the Commission of facts established by the evidence in the case, forbid the Commission's conclusion that discrimination or prejudice within the inhibition of the Interstate Commerce Act has been practiced by Appellant. And since its action in this case the Commission has considered in identical cases the track-age agreements and operating arrangements attacked in the two proceedings here involved, and has found that they did not result in discrimination or prejudice.

Section 3, paragraph 1 of the Interstate Commerce Act (Act of February 4, 1887, 24 Stat. 379) provides:

Sec. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(a) Trackage Contracts

It is not necessary to burden the Court with a prolonged discussion of the operation of the railroad of the Appellant under the trackage contracts referred to further than to say that they were entered into to bring an increased tonnage to Appellant and to avoid duplication of railroad construction and operation in a highly competitive field (R. 315 et seq.). The facts with regard to the contract and the operation under them were placed fully and comprehensively of record before the Commission, as hereinbefore summarized (*infra* 12). In its original report the Commission dismissed this issue and the voluminous record upon it in these words (R. 21-2):

Complainants allege that this results in undue prejudice to mines on the Virginian not so served but our findings will make it unnecessary to pass upon that issue.

If it considered this issue in reaching a conclusion of undue prejudice practiced by Appellant, it was the duty of the Commission to make a report in writing with respect thereto. Sec. 14, par. (1), Interstate Commerce Act (Act of Feb. 4, 1887, as amended; 24 Stat. 379; 41 Stat. 456) provides as follows:

Sec. 14. (1) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; * * *

The Commission may not arbitrarily make a finding of undue discrimination or prejudice and base an order thereon without disclosing to the carrier and the Courts the evidence upon which it was based and, acting upon this axiom of law, the original report of the Commission frankly stated that it had not considered the evidence on this phase of the case and made no report of such evidence.

But when Appellant filed its bill in the District Court seeking to set aside the order, the Commission apparently appreciated that no facts whatever were shown in its report justifying a finding with respect to undue prejudice and it thereupon amended its report by eliminating from the paragraph quoted the phrase "but our findings will make it unnecessary to pass upon that issue." No facts were stated or could indeed have been found in the record that would have supported a finding of undue prejudice against the complainants by reason of the trackage contracts.

But the Commission made another important amendment of its original report and order in that it eliminated any requirement that the Eastbound rate basis from Complainants' mines be in any way changed. The charge of prejudice resulting from these trackage contracts was made as well to the Eastbound adjustment as to the Westbound; there are no facts in the record that differentiate one from the other, and the elimination of the Eastbound rates from the order confirms conclusively the statement in the original report of the Commission that it had not considered the charge

of prejudice arising from the trackage contracts in reaching its conclusion.

The Commission, in its amended report, also inserted in the following sentence of its finding of discrimination, the language which is underscored.

No sufficient reason from an operating standpoint appears why the mines on the Virginian discriminated against as aforesaid should be kept on a different rate footing from *other mines on the Virginian or on the branch lines of the C. & O. or on independent short lines within the district.*

As we shall presently show, Appellant cannot be held responsible for the alleged discrimination in favor of the joint mines on its line and the C. & O. which is claimed to exist by reason of the application by the C. & O., as originating carrier, of the New River district rates to the West from these mines. The attention of this Court, however, is called to the attempt of the Commission to change the findings made by it, after the filing of the bill in this case. It is earnestly urged that this Court should not countenance such an effort, made without hearing and without evidence before the Commission to warrant the change. If the record was not sufficient to justify such a finding when the original report was rendered, the change is not supported by any evidence, and is therefore invalid.

But if there were any doubt about the fact that this charge of prejudice was not proved or considered by the Commission in reaching its conclusion regarding the westbound rates in this case, that doubt is entirely cleared by two decisions of the Commission recently made in which the same issue was raised on behalf of other mines located on the same Winding Gulf Branch

of Appellant with the mines of complainants in these cases. *Winding Gulf Colliery Co. vs. C. & O. Ry. Co.*, 115 I. C. C. 113; *Ragland Coal Co. vs. Virginian Ry Co.*, 115 I. C. C. 147.

In both of these cases the same trackage contracts were attacked under the charge that they resulted in undue prejudice to the mines of complainants there and others similarly circumstanced. The same contracts and operating arrangements that are involved in the instant case were fully analyzed in the unanimous report of the Division of the Commission in these cases and the complaints were dismissed.

Insofar, therefore, as the charge of prejudice in the present case is based on the trackage agreements and operating contracts between Appellant and the Chesapeake & Ohio, it has been found by the Commission to be unfounded.

Furthermore, if the Commission's finding of undue prejudice in this case were based upon the trackage contracts, the Appellant is entitled, as of right, to an alternative order under which it might cancel the trackage contracts and thus relieve itself of the charge of discrimination without incurring the ruinous penalty of establishing Western rates via the Chesapeake & Ohio.

The Commission can not accomplish by indirection that which it could do by a direct order addressed to the specific finding of prejudice if such were found to exist. If undue prejudice were found to exist in the advantages accruing to the joint mines under the trackage contracts, the Commission might have ordered its removal by an alternative order; it might have ordered the extension of the practices under the trackage contracts to complainants' mines if it found also under

Section 1 that it would be reasonable so to do; it might even have ordered the removal of the prejudice by the establishment of the district rates from complainants' mines if it also found under Section I that such rates would be intrinsically reasonable under the ordinary transportation standards; but unless there were a specific and legally sufficient finding of reasonableness under Section I the Commission is without power to order a prejudice, found under Section III, to be removed in any particular manner. The Commission's findings under Section I, as will abundantly appear, are not supported by evidence and are legally insufficient. It follows that its order, even if based on a sufficient finding of prejudice, is arbitrary and destructive of Appellant's rights. (*Central R. R. of New Jersey vs. United States*, 257 U. S. 247, 257, 258.)

(b) Prejudice Due to Rates Published by the Chesapeake & Ohio and Norfolk & Western Railways

But another charge of prejudice is laid in the complaints in these cases before the Commission based on the proposition that the Chesapeake & Ohio and Norfolk & Western maintain rates on a group basis, the level of which is admittedly abnormally low. The Virginian Railway having no line of its own to the West had declined to publish these competitive rates from mines on its line. The complainants before the Commission assert that this results in undue prejudice.

The testimony before the Commission in this regard is elaborately discussed in its report, but this discrimination is not found by the Commission to be undue for it avoids any finding with regard to it. Indeed, Appellant could not be held to have violated Sec-

tion 3 of the Interstate Commerce Act because of any unduly low rates published by its connections, which prejudice it could only remove by participating in unremunerative rates. If it could be so charged its right to initiate its rate policy would be without substance. *U. S. vs. Illinois C. R. Co., supra*. If it may not initiate its own rate policy, in the absence of a discrimination of its own making, then its independence of action does not exist. As this Court said in *Central Railroad Co. of New Jersey vs. United States*, 257 U. S., 247, 259:

If this were not so, the legality or illegality of a carrier's practice would depend, not on its own act, but on the acts of its connecting carriers. If that rule should prevail, only uniformity in local privileges and practices, or the cancellation of all joint rates, could afford to carriers the assurance that they were not in some way violating the provisions of Section 3. What Congress sought to prevent by that section, as originally enacted, was not differences between localities in transportation rates, facilities, and privileges, but unjust discrimination between them by the same carrier or carriers. Neither the Transportation Act, 1920, February 28, 1920, chap. 91, 41 Stat. at L. 456, nor any earlier amendatory legislation, has changed, in this respect, the purpose or scope of Section 3.

And again (p. 256):

But the question presented here is whether the discrimination found can be held in law to be attributable to the appellants, and whether they can be required to cancel existing joint rates unless it is removed. No finding made by the Commission can prevent the review of such questions.

See also *Philadelphia & R. R. Co. vs. United States*, 240 U. S., 334.

(c) Prejudice Found by Commission Not Chargeable to Appellant

The finding of prejudice in the Commission's report is couched in the following language (R. 55):

Whatever may have been the policy of the C. & O. in respect of the extension of its district rates to mines on other lines within the New River district, the fact remains, that, with the exception of the mines on the Virginian, all mines on other lines connecting with the C. & O. now enjoy the district rates. The C. & O. through its witness states that it does not oppose the extension of district rates to mines on the Virginian. Counsel for the Virginian admits that complainants' mines cannot compete with other mines in the district on account of the "impossible" rates. No sufficient reason from an operating standpoint appears why the mines on the Virginian discriminated against as aforesaid should be kept on a different rate footing from *other mines on the Virginian* or on the branch lines of the C. & O. or on independent short lines within the district. Under the circumstances it must be and is concluded that the prejudice against complainants' mines is undue within the meaning of the act. (Italics ours.)

The only language in this finding that refers to anything done or omitted by the Appellant that might seem to charge it with discrimination or prejudice is found in the clause "should be kept on a different rate footing from other mines on the Virginian." The language underscored in the finding of discrimination was inserted by the Commission into its amended report after the filing of the bill in this case.

The record shows that no district rates to the West

on coal are published by the Appellant or were participated in by it, at the time of the original decision, from any mines on its line (R. 320). Some mines on the Virginian are reached also by the C. & O. under the trackage agreements referred to and that carrier publishes rates to the West from such mines on the district basis showing the same in its tariffs as mines on its line (R. 702), and properly, without showing the Virginian as a participating carrier. That the Virginian has not been shown to be guilty of any undue prejudice on account of the trackage contracts we have previously shown and the Commission has expressly so found in the *Winding Gulf Colliery* and *Ragland* cases, *supra*.

It thus appears that the only undue prejudice found to exist with respect to complainants' rates lies in the practice of the Chesapeake & Ohio in extending its district rates to mines on its branch lines and on independent short lines connecting with it in the field. That the Chesapeake & Ohio did not oppose the establishment of the district rates to the West is far from an admission by that carrier that the discrimination practiced by it is undue. This proposition will be later discussed after we have dealt with the short-line rates relied upon by the Commission.

So far as the extension of the district rates to short lines is concerned, that policy is one that has been dictated by the Commission in the line of cases cited in its report, but not cited, be it noted, as bearing on the question of prejudice and no one of them rests upon that principle. All of these cases to which reference is made are based on the right of a carrier to maintain a group basis of rates and arbitrarily exclude therefrom points on connecting lines from which the cost of operation is no greater than the cost on the average from the

points on the originating carrier. The principle in those cases is affirmed by this Court in the *Illinois Central Case*, *supra*, which we again quote for convenience at this point because it so clearly states the proposition:

(263 U. S. 522.)

A carrier is entitled to initiate rates, and in this connection to adopt such policy of rate making as to it seems wise.

And, more particularly, at p. 524:

To bring a difference in rates within the prohibition of Section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not justified by the costs of the respective services, by their values, or by other transportation conditions.

It is to be noted that the opposition that was raised by the short line in that case to the inclusion of short-line points in the blanket went only to the question of the division of the rate, and in the separate case filed by the short line the only additional fact considered was that the joint rate to the short-line points had no points of distinction from the other joint rates that were included within the blanket territory. In that case the Commission's discrimination order requiring the extension of the blanket rate was sustained by this Court because, and only because, the transportation conditions applying to the movement from points on the originating carrier did not differ from the trans-

portation conditions obtaining elsewhere in the blanket sufficiently to justify the difference in rates, short line and trunk lines having joined in establishing through routes and joint rates and divisions of the rates.

As hereinbefore set out, the operating conditions are wholly different and involve greater cost in the case of the Virginian mines than in the case of the mines on the C. O. and its branches within the New River District.

The short line cases cited in the report are clearly distinguishable. In all but one of the cases cited by the Commission wherein it has extended the district rates of the Chesapeake & Ohio to mines on short independent connections, it has done so only upon a demonstration of each of the following facts:

1. The independent short line had outlet to the market only over the Chesapeake & Ohio (R. 282).
2. The average service from mines on the Chesapeake & Ohio in the district was as great or greater than the combined service of the short line and the Chesapeake & Ohio on traffic from mines on the short line.
3. The independent short lines advocated the rate policy of thus spreading the district rate.
4. The interchange operation was simple.

McKell Coal & Coke Co. vs. C. & O. Ry. Co., 78 I. C. C., 227.

Coal from Sewell Valley R. R. Stations, 58 I. C. C., 261.

Campbell's Creek Coal Co. vs. A. A. R. R. Co., 33 I. C. C., 558.

Hughes Creek Coal Co. vs. K. & M. Ry. Co., 29 I. C. C., 671.

Coal from W. Va. Mines, 59 I. C. C., 486.

Consolidation Coal Co. vs. C. & O. Ry. Co., 60 I. C. C., 763.

Riverside Coal Co. vs. Director General, 68 I. C. C., 205.

In none of these cases did the Commission find an undue prejudice or discrimination against the mines on the short lines by reason of the higher rates maintained from their mines which was ordered removed by the establishment of the district rates from the complaining mines, unless upon an accompanying finding that the rates were unreasonable under Section 1 of the Interstate Commerce Act based on the ordinary and usual transportation standards, such as length of haul, expense of interchange service, grades encountered, and other considerations based on the cost of service.

Each of the cases cited above was decided upon the particular facts thereof, and in none was the district rates extended to points on connecting lines unless it were shown that the same would be reasonable as compared with the points within the group on the defendant's lines. When we discuss later herein the reasonableness of the rates here in issue we shall show that all of these cases are distinguishable under the circumstances and conditions under which the proposed through routes are to be operated.

The only short line case cited by the Commission that was decided on findings and facts that in any way resemble the instant case was *Nelson Fuel Co. vs. C. & O. Ry Co.* That case was originally decided by the Commission on findings similar to those set out above. The report appears at 83 I. C. C. 737. Later the case was reopened on the motion of the Chesapeake & Ohio

and elaborate proof was offered to show that the operating conditions and costs were substantially different from the average of the group. The Commission found, 96 I. C. C. 124, that the differentiating conditions there shown were not sufficient to justify the higher rates. The case has since been again reopened but has not been again decided. The Court will note that the costs of operation on the short lines there involved exceeded the average from the group by only a fractional part of the excess that is demonstrated by undisputed testimony in the instant case and furthermore that the mines on the short lines had no other outlet to markets than that provided by the route over the C. & O.

The instant case is clearly distinguishable from the Paducah Case, *St. Louis S. W. R. R. Co. vs. United States*, 245 U. S., 136.

There the order was sustained because:

1. The appellant participated in through routes and rates to Paducah, as well as to the preferred point—Cairo.
2. The through route prescribed was found reasonable based on ordinary transportation standards of measurement.
3. The discrimination there found was held to be attributable to appellants.
4. No question of public interest was raised.

The *Paducah* and *Illinois Central Cases*, *supra*, both were cases in which the rate-making line participated in the discrimination practiced and controlled it. In both of those cases the difference in rates was not justified by a difference in transportation conditions or transportation costs. In both of those cases through routes and rates existed and traffic moved under them.

In neither of those cases was there any showing that the public interest was opposed to the establishment of the through routes and rates involved.

The record before the Commission, and even its report, meagre as it is in discussion of these differentiating facts, fully demonstrated that this case is distinguishable upon each of the grounds stated from the *Paducah* and *Illinois Central* cases.

The attitude of the Chesapeake & Ohio in not opposing the establishment of its district rates from Virginian mines as stated in the report of the Commission, is opposed to its attitude in contesting the extension of rates to short lines within the district. And the statement of the Chesapeake & Ohio in this regard as made by its witness (R. 423-4) is not quite accurately reflected in the report of the Commission. The witness recites certain facts showing to some extent the difference in conditions that would prevail on Virginian traffic as compared with its short-line connections, and says (R. 424):

Fourth, we feel that this case should be decided upon the pertinent facts and circumstances which go to show whether such a through route should be established and, if so, what is a reasonable rate.

In other words, it would have been more accurate had the Commission stated that the defense of the case was left by the Chesapeake & Ohio to the Virginian. The Chesapeake & Ohio merely clarifies the issue and leaves the complainant to its proof. After the decision of the Commission, as shown on the record in the District Court, the Chesapeake & Ohio, so far from acquiescing in the rate basis prescribed, limited its con-

currences in tariff publications and failed to negotiate divisions of the rates prescribed (R. 1063 et seq.).

But the attitude of the Chesapeake & Ohio towards the establishment of the rates here prescribed is immaterial. The Commission may not compel this Appellant on the discrimination issue to join in rates by a finding that is confined to elements of discrimination contained in the practices of the Chesapeake & Ohio.

The same legal principles applied by this Court in the *Central R. R. of New Jersey case*, *supra*, apply with equal force to any attempted action by the Commission to force either the Chesapeake & Ohio or the Virginian to publish rates from complainants' mines on the district basis based on a finding of discrimination against complainants in favor of the mines on the Chesapeake & Ohio. Neither the one nor the other can be held guilty of discriminating. The Virginian does not participate in the preferential rate structure in any form and the Chesapeake & Ohio cannot be held guilty of discriminating against local mines on the Virginian nor can it publish rates from those mines on the district basis in the absence of acquiescence from the Appellant.

The Appellant has never participated in through routes or rates to the West on coal. As stated by counsel, quoted in the report of the Commission (R. 320, 321):

The coal rates to the west over the Virginian line as they now exist, are rates that reach every station including the junction points of Pemberton and Deepwater, but are made on the Virginian Railway's local distance tariffs. They are not merely unreasonable rates—I will say, frankly, to

your Honor that they are impossible rates. We hope they will remain so, and we believe we are going to show your Honor and the Commission, through you, why these rates should not be touched.

For one thing, to handle any substantial amount of coal to the west over the Virginian Railway means the building of new yards with presumably interchange facilities involving very considerable expense, and very considerable additional expense must be incurred in such improvement as can be made to the present main line tracks. The handling of this coal to the west will be expensive as compared with handling the same amount of tonnage eastbound.

This means that a considerable amount of a very considerable expenditure will ultimately be wasted, because eventually when the Virginian reaches the western markets, which it undoubtedly, I think, will do some day, any outlet by way of Deepwater will be discarded and the outlet will be down Coal River from the point or near the point where the Virginian now crosses the Surveyor's Fork of Coal River.

As I was saying, your Honor, it seems clear to us that a very large part of the money that would have to be spent to handle any substantial amount of western business would be an expenditure for temporary purposes only, and therefore ultimately—and I hope not before very long; I mean, as such things go in the railway world—ultimately to be wasted. This means the diversion of money in capital expenditures if we make this temporary expenditure, or in increased operating cost if we attempt to handle additional tonnage over a track that is poorly adapted to the purpose. We think that the Virginian could expend in other directions that much with more advantage to itself and we

think with much more advantage to its shippers than an expenditure made in aid of western outlet for Virginian coal.

This was made in the opening statement and before testimony was introduced. It was made as background for the defenses that were subsequently presented, i. e., (a) a lack of a public interest in the establishment of through routes and rates to the West from the Virginian mines; and (b) the different and more expensive operating conditions from Virginian mines than from mines in the Chesapeake & Ohio blanket. This statement will be again discussed in connection with the reasonableness of the rates prescribed by the Commission. It is referred to here as indicating that, under the rate policy of Appellant, no through routes or joint rates on coal to the West existed from Virginian mines, such as were involved in the *Paducah* and *Illinois Central* cases, *supra*, and no traffic had moved to the West on the combination rates at the time the record was made before the Commission.

While the case was there pending, one of the complainants moved some coal under the combination rates and has filed complaint asking the Commission to award reparation on such shipments. Unless the Commission shall reverse its decision in the *Ragland* and *Winding Gulf* cases, *supra*, it will find upon that complaint that the combination rates in the past were not unreasonable. It is admitted by complainants that no through rates to the West will carry any coal from the Virginian mines in normal times that are in any degree in excess of the district rate.

The Commission is without power to order the establishment of through routes and rates without first finding that the establishment of such rates and routes will be in the public interest. The Commission avowedly did not consider the evidence or make any finding in this regard, and the facts found by the Commission, together with those of record before the Commission and not disclosed by its report, preclude any finding that the through routes and rates will be in the public interest.

That there are no present through routes or joint rates on coal from Virginian mines to destinations via, on, or over the Chesapeake & Ohio is sufficiently evidenced by the facts introduced before the District Court showing the method under which the coal has been handled during the pendency of this proceeding from a mine of one of the complainants before the Commission to points of destination reached by the Chesapeake & Ohio. These shipments were handled on local billing of the Virginian to Pemberton from which point they are waybilled anew by the Chesapeake & Ohio as though originating at Pemberton (Rec. p. 1063).

What constitute through routes and rates were fully discussed by the Commission in the case *Through Routes and Through Rates*, 12 I. C. C., 163, wherein it was held that a through route and rate might exist only if there were some arrangement or agreement, express or implied, between the carriers for the handling of the traffic, and under which traffic moved.

The words "Through route and joint rate" as used in the Interstate Commerce Act are given a technical legal meaning as defined in *Through Routes and*

Through Rates, supra. When no such route exists as so defined, the Commission is given power to establish through routes and joint rates under paragraph (3) of Section 15 of the Interstate Commerce Act, and not elsewhere. It is by that provision of law given authority to establish such routes and rates only upon a specific finding that the establishment thereof is necessary or desirable in the public interest.

Paragraphs (3) and (4), Section 15 of the Interstate Commerce Act (Act of February 4, 1887, as amended, 24 Stat. 379; 34 Stat. 838; 36 Stat. 539; 41 Stat. 456) read as follows:

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character; nor shall the Commission have the right to establish any route,

classification, or practice, or any rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

(4) In establishing any such through route the Commission shall not (except as provided in Section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: *Provided*, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

The decision of this Court in the *Paducah Case*, *supra*, did not change the technical definition of a through route and joint rate from that of the Commission in *Through Routes and Through Rates*, *supra*, cited with approval in the *Paducah Case*.

The Appellant contends that a case justifying the Commission in establishing through routes and joint rates was not made before the Commission; on the con-

trary, the cases fall within the inhibition of the paragraph quoted, which authorizes the establishment of such routes and rates only when the Commission shall first find such routes and rates "necessary or desirable in the public interest." The majority report avowedly excludes from its consideration the fundamental question of the public interest. The facts of record before the Commission are conclusive upon the proposition that the establishment of such routes and rates is against the public interest.

The record shows that the establishment of the district rates to the West in connection with the Chesapeake & Ohio will:

1. Impair the capacity of the Virginian adequately to serve its Eastern seaboard markets and delay the completion of its program as an effective Eastbound carrier (R. 467, 475, 482, 489, 508, 518, 527, 581).

2. Deplete the car supply of the Virginian and create a wasteful use of equipment to the damage of complainants and other operators, out of all proportion to any occasional benefit to be had from the markets in the West (R. 467, 475, 482, 489, 508, 518, 527, 581).

3. Overload the Chesapeake & Ohio and unduly impair its revenues, its car supply and its service to the damage of its own patrons (R. 467, et seq.).

4. Create an extravagant and wasteful transportation service against the public interest (R. 467 et seq.).

And

5. Require large capital investment in improvements and facilities that will ultimately be discarded when the Virginian shall be built to the West or consolidated with any other Westbound system (R. 336, 740).

These are all questions that weigh heavily against

the public interest in the establishment of these Western coal rates. The Commission frankly admits that it has not considered this evidence. It said (R. 51):

“Much evidence was introduced to show the advantages or disadvantages which would result to complainants, to interveners, and to defendants from opening the western markets to complainants’ mines and as to whether such action would be in the public interest. Irrespective of these considerations complainants are entitled to move their coal to any market at reasonable and nonprejudicial rates. We have repeatedly condemned the action of carriers in adjusting rates so as to impede or stifle the movement of commodities in any given direction. *Cardiff Coal Co. vs. C. M. & St. P. Ry. Co.*, 13 I. C. C., 460; *Star Grain & Lumber Co. vs. A. T. & S. F. Ry. Co.*, 14 I. C. C., 364; *Chamber of Commerce of Milwaukee vs. C. R. I. & P. Ry. Co.*, 15 I. C. C., 460; *Wichita Board of Trade vs. A. T. & S. F. Ry. Co.*, 25 I. C. C., 625; *Rates on Plaster and Gypsum Rock*, 27 I. C. C., 67; *Coal from West Virginia Mines*, 59 I. C. C., 486. Complainants’ right and defendants’ duty in this respect are not affected by the fact that the Virginian was constructed, and has been and is being improved, with a view to moving coal eastbound only. *Hughes Creek Coal Co. vs. K. & M. Ry. Co.*, 29 I. C. C., 671; *Coal From West Virginia Mines*, *supra*.”

The enlarged powers given to the Commission in the Transportation Act, 1920, so far as they relate to the circumstances of this case, may be said to have stated the policy of Congress in the public interest so as to:

1. Fix a rule of rate-making that will foster transportation.

2. Prevent carriers from participating in unremunerative rates by the minimum rate powers.

3. Prevent the building of unnecessary mileage.

4. Prevent the issuance of securities for unnecessary and improvident construction and enlargement of facilities and equipment.

5. Prevent the wasteful use of equipment.

The rate policy of the Virginian, which the Commission's order annuls, anticipated these policies of Congress as the sound economic formula under which the Virginian might develop its service in its own interest and in the interest of those it served.

Testimony was introduced showing that Western rates via the Chesapeake & Ohio would increase its transportation costs both East and West and delay and impede the perfection of its eastbound machine; that the trackage contracts and operating arrangements under them served to minimize the building and operation of unnecessary mileage; that the spreading of the unduly low rates of the C. & O. to cover the large assembling costs in the coal field of the Appellant would seriously impair the service to its shippers and the investment made in the Eastbound machine; that the service to the West involved serious draining of car supply and a wasteful use of cars in that for every car moved West two cars might move to the East; that the enlargement of the interchange and increase of facilities to effectively handle Westbound movement via the Chesapeake & Ohio would involve a capital cost of at least \$1,500,000 that would be of absolutely no value when the Appellant shall finally build its own line to

the West by another and more economical route or when it shall have been consolidated with some other line.

All these questions of public interest the Commission states it has not considered, but that *regardless of such matters* "these complainants are entitled to reasonable and nondiscriminatory rates."

Even in a case where it is shown that the difference in rates is not warranted by difference in transportation costs and conditions, it is doubtful whether such showing would outweigh the public interest as above defined. But certainly under the circumstances of this case, the Commission is without power to disregard these public considerations.

The question of public interest in the establishment of through routes and rates is a matter of primary consideration and first importance, and the Commission has heretofore so held uniformly. In *Tidewater Paper Mills Co. vs. B. T. R. R. Co.*, 80 I. C. C., 493, 497, the Commission said:

* * * the general provision of paragraph (4), Section 1, that the carriers shall establish through routes and reasonable rates applicable thereto is subordinate to the specific provision of Section 15 for the establishment of through routes and joint rates.

And again:

that certain of the carriers were participants in joint rates on wood pulp from other points to Fresh Pond Junction, Harlem River, and Brooklyn does not prove that the combination rates were unreasonable.

The principles there announced have been followed by the Commission in other cases, *Hood Coal Co. vs. M. V. T. Co.*, 73 I. C. C., 54; *National Fireproofing Co. vs. Director General*, 62 I. C. C., 49; *Tobacco from Ohio River Crossings*, 73 I. C. C., 384, and are thus discussed in the dissenting opinion of Commissioner Cox in the present case, which is here for convenience set out (R. 59).

The findings of the majority will compel the Virginian to meet by joint rates the westbound New River district rates of the Chesapeake & Ohio. The majority find that, irrespective of considerations of public interest, complainants are entitled to move their coal to any market at reasonable and nonprejudicial rates. They further find that under the circumstances of this case relative reasonableness rather than intrinsic reasonableness, becomes the important thing to be considered and other criteria fall into the background. I agree that complainants are entitled to reasonable and nonprejudicial rates, but I do not believe that under the circumstances and conditions surrounding this traffic the failure to extend the highly competitive New River basis to mines served exclusively by the Virginian is either unreasonable or unduly prejudicial. Rates like the Outer Crescent group rates on coal made in practical disregard of distance and other transportation conditions that ordinarily enter into the making of rates are, I believe, justified only on the ground of public interest. In my opinion the extension of the group rates to the Virginian mines is not necessary or desirable in the public interest.

The Virginian begins immediately west of the boundary line of the New River district and extends eastward to tidewater. It was built and developed to haul coal eastward, particularly to tide-

water. Its maximum haul in that direction is about 450 miles. Its construction cost was high but seems to be justified because for about 340 miles the maximum grade is only two-tenths of one per cent. The majority of the Virginian's 9,500 coal cars remain under its control and are returned to the mines in from 10 to 16 days. In short, on eastbound coal the Virginian is in a position to render maximum efficient service at rates not excessive. Ordinarily it has been efficient in service and its rate from the New River district to tidewater, 444 miles, is \$2.52 per long ton. On westbound coal the average haul would be but 64.7 miles, mainly expensive assembling service, and this haul is 22 miles greater than the average distance from the Chesapeake & Ohio mines to the same point.

The Chesapeake & Ohio is differently situated. It extends through the New River and other coal districts and with its own or affiliated lines it reaches such important gateways and points as Cincinnati, Louisville, Chicago, Toledo and Washington. Its lines are normal routes for both eastbound and westbound coal and to practically all of official territory it secures a very substantial line haul. The extent and direction of its lines naturally make it one of the main factors in the westbound movement of coal under the highly competitive Crescent adjustment of rates.

In determining whether joint rates are necessary or desirable in the public interest we must consider the interests of the consuming public, the shippers and the carriers. I am unable to see that the consuming public in general will be benefited. Any movement to the west will divert a corresponding amount from a normal efficient route to the east, and the tonnage westbound would merely displace other coal more naturally tributary to those markets and be insufficient in volume to affect

prices. The shippers on the Virginian would have additional markets but it is difficult to understand why they should be more desirable or advantageous under ordinary circumstances than the present markets. Whatever advantage there might be in such additional markets to certain shippers appears to me to be neutralized to the disadvantage of both consumers and shippers in the less efficient service which the Virginian would render with its present facilities. Every car of coal moved westward would be equivalent to removing at least two and one-half similar cars from the eastbound service. In practice, if not in theory, a trunk line carrier originating a substantial volume of coal supplies the cars. In his separate expression in *Ohio-Michigan Coal Cases*, 80 I. C. C., 663, in which I joined Commissioner Potter said:

Additional transportation can be obtained only by increased facilities or the increased use of existing facilities. Increased facilities involve large expenditures and their use involves increased expense for handling and because of congestion, etc. Increased efficiency without increased equipment is the primary need. Increased efficiency in the use of equipment can be accomplished by making the equipment handle more tons per unit of time—day, month or year.

To move 2,000,000 tons of coal westbound the Virginian claims that 5000 additional cars costing \$15,000,000 would be required. Whatever the expense, I question whether it would not be largely wastage if the equipment is to be devoted to uneconomical long-haul service not more necessary than that asked in this complaint. The Virginian would be compelled to rearrange its tracks within the district at considerable expense to accommodate the western

movement; a cross-current of traffic would be created which would increase assembling costs on all its coal, and on a substantial volume of tonnage it would be deprived of the line haul whereby it earns the funds necessary to maintain its present efficiency. In so far as the Chesapeake & Ohio is concerned, west of Huntington that defendant already moves, according to the testimony of one of its witnesses, its trains as close together as safety will permit. I am unable to agree that rates from mines on the Virginian in the New River District are unreasonable and unduly prejudicial to the extent that they exceed rates from mines on the Chesapeake & Ohio within that district.

In the cases cited by the majority report of the Commission in condemnation of the Virginian's rate policy the question of public interest is considered and discussed and in none of them is any carrier compelled to extend blanket or district rates to points on the line of another carrier where the operating conditions and costs are greater from the connecting carrier's line than from the average of the group that is ordered extended. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co. et al.*, 13 I. C. C., 460, and *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, both were cases where the line-haul carrier sought arbitrarily to cancel joint rates in order to protect itself and the shippers on its own line against the competition of off-line shippers; in each the principal defendant was participating in rates to the markets which complainants sought to reach, which rates would be in all respects reasonable from the shipping points of complainants measured by any ordinary test of reasonable rates; and, furthermore, in each the principal defendants were line-haul

carriers, and the complaining shippers had no other outlet for their wares. In this respect these two cases have many points in common with the short line cases referred to by the Commission in another part of the report and heretofore referred to.

In *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.*, 15 I. C. C., 460, the Commission said:

The rate must be reasonable with respect to the service actually performed.

In *Rates on Plaster and Gypsum Rock*, 27 I. C. C., 67, 70, the Commission said:

The chief respondent admits that its purpose in taking steps to withdraw the present through rates was a purely selfish one, and it has not even attempted to show the reasonableness of the higher charges that it proposes to exact on this traffic.

All these cases differ fundamentally from the instant case in which the Virginian contends, and its contention was supported at the hearing by a majority in number and volume of its coal shippers, that its refusal to enter into through routes and joint rates to the west is in the interest of its coal shippers, including the complainants before the Commission, and the rest of the public, as well as itself, and it does not participate in a single rate which the Commission used in its comparisons on the question of discrimination and prejudice.

III

The evidence before the Commission does not support its findings that the rates on coal to the west from

Virginian mines via the Chesapeake & Ohio are unreasonable to the extent that they exceed the New River District rates maintained by the Chesapeake & Ohio from mines on its own main and branch lines and connecting lines having no other outlet to the markets.

The question of the reasonableness of the rates involved in these proceedings may be narrowed to these propositions:

Can the Commission prescribe as reasonable maximum rates group rates established by carriers other than Appellant, for application from lines of Appellant, from more distant points, under difficult operating conditions, on a mere finding of relative unreasonableness? Can the Commission prescribe under Section I of the Act rates which are declared by the Commission in the case under review to have been "the outcome of competitive strain and stress through a long period of development," and in other cases, to have been made "in practical, if not absolute disregard of distance, and all transportation conditions that ordinarily are taken into consideration in the making of rates" (*Bituminous Coal to C. F. A. Territory, supra*), and which rates are "maintained under" such a "highly competitive adjustment" that they "could hardly be considered as standards of reasonableness for rates maintained under other conditions" (*Carnegie Steel Co. vs. Pennsylvania Railroad Company*, 100 I. C. C., 353-6)?

Paragraphs (4) and (5) of Section I of the Interstate Commerce Act (Act of February 4, 1887, as amended, 24 Stat. 379, 34 Stat. 838, 36 Stat. 539, 41 Stat. 456) read as follows:

Sec. 1.

(4) It shall be the duty of every common car-

rier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*, That messages by wire or wireless subject to the provisions of this Act may be classified into day, night, repeated, unrepeatd, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: *And provided further*, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for the exchange of services.

The powers of the Commission with regard to rates is not absolute. They are thus defined by the Commission in its decision in *Investigation and Suspension*

Dockets 26 to 26C, 22 I. C. C., 604, 624, quoted with approval by the Commission in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66, 112.

We may not say that a rate shall be fixed so as to meet the requirements or needs of any body of shippers in their efforts to reach a given market, nor may we establish rates upon any articles so low that they will not return out-of-pocket costs. Neither could we fix an entire schedule of rates which would yield an inadequate return upon the fair value of the property used in the service given. There is, however, a zone within which we may properly exercise "the flexible limit of judgment which belongs to the power to fix rates." These are the words of the Chief Justice of the Supreme Court, 206 U. S. 26. There is no flexible limit of judgment if all rates must be upon a level of cost, and out of every dollar paid to the carrier must come a fixed amount of return for capital invested. The recognition of such a doctrine has never been suggested either by Congress or the Supreme Court. *A just and reasonable rate must be one which respects alike the carrier's deserts and the character of the traffic. It cannot be a rate that takes from the carrier a profit and thus favors the shipper at the carrier's expense, nor is it one which compels the shipper to yield for transportation given a sum disproportionate either to the service given by the carrier or to the service rendered to the shipper. The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms. Their meaning implies the exercise of judgment, and against the improper exercise of that judgment the Constitution gives protection, at least as far as the carriers are concerned. (Italics ours.)*

The exercise of the powers of the Commission under the conditions above named is further limited by the rule laid down by this Court that the findings of the Commission must be supported by evidence.

While a finding of fact made by the Commission concerning a matter within the scope of the authority delegated to it is binding and may not be reexamined by the courts, it is undoubted that when it is contended that an order whose enforcement is resisted was rendered without any evidence whatever to support it, the consideration of such a question involves not an issue of fact, but one of law, which it is the duty of the courts to examine and decide. *I. C. C. vs. L. & N. R. R. Co.*, 227 U. S., 88, 91, 92. (*Florida East Coast Railway Co. vs. United States*, 234 U. S., 167, 185.)

That an order of the Commission unsupported by substantial evidence or contrary thereto, or arbitrary is void, is well settled by many decisions of this Court.

Florida East Coast Ry. Co. vs. United States,
supra.

Central R. R. Co. of New Jersey vs. United States, 257 U. S., 247, 256-7.

Philadelphia & Reading Ry. Co. vs. United States, 240 U. S., 334.

Interstate Commerce Commission vs. L. & N. R. R. Co., 227 U. S., 88, 91.

Interstate Commerce Commission vs. Union Pacific R. R. Co., 222 U. S., 541, 547.

United States vs. Louisville & N. R. R. Co., 235 U. S., 314, 320.

Western Paper Makers Chem. Co. vs. U. S., 70 L. ed. (Adv. 504).

The low and competitive nature and character of the

rates herein prescribed is discussed under the description of the Westbound rates, *supra*, and will not be repeated.

The only testimony introduced of record in this case by the complainants in these proceedings is general testimony describing the rate adjustment which is described by the Commission in *Bituminous Coal to C. F. A. Territory, supra*, and exhibits showing the average mileage from Virginian mines to Western points; the purpose of this testimony apparently being to show merely that the rate is unreasonable because, while the average distance from Virginian mines was over 22 miles greater than the average from the Chesapeake & Ohio New River group (R. 654), that considering the Norfolk & Western and Carolina, Clinchfield & Ohio Railway mines, the average distance from Virginian mines was less than the average from all of these groups. The description of these rates by the Commission in *Carnegie Steel Co. vs. Pennsylvania R. R. Co., supra*, that they could "hardly be considered as standards of reasonableness for rates maintained under other conditions" must be borne in mind as well as the testimony of the witness introducing the exhibits and testifying as to the reasonableness of the rates. He testified (R. 268) that "none of these rates from this entire section to what is known as the Outer Crescent were predicated upon transportation conditions. They were largely fixed disregarding the distance conditions."

The Commission in its decision apparently recognizes the inherent reasonableness of the combination rates under attack, in the absence of any attack on the factors thereof, or on the through rate, and states in the decision (R. 57, 58):

Under the circumstances of this case, relative reasonableness rather than intrinsic reasonableness, becomes the important thing to be considered, and other criteria, such as ton-mile earnings, fall into the background. In *Corporation Commission of Virginia vs. C. & O. Ry. Co.*, 40 I. C. C., 24, 28, we said:

It is true that in determining the reasonableness of rates, due consideration of their relation to other rates of the various carriers serving the same or competing localities should be given. *In other words, section 1 of the act contemplates that rates to be just and reasonable must be relatively fair as between localities similarly situated, as well as reasonable per se.* (Italics ours.)

The deficiency in the finding in the instant case lies in the fact that the Commission did not make a finding that the rates prescribed were *reasonable per se*.

The Commission has, as above indicated, attempted to make in this case a finding that the rates assailed are *relatively unreasonable*. It is the contention of Appellant that the Commission is without power, under the guise of such an attempted finding, to disregard the usual criteria of unreasonableness.

At the outset it should be noticed that throughout the record it is made very clear that the unreasonableness of which the complainants complain is "relative unreasonableness" as distinguished from "intrinsic" or "*per se* unreasonableness," the idea apparently being that a state of facts may be shown which would justify a finding of relative unreasonableness but would not justify a finding of unreasonableness *per se*. We have made use of the term "relative unreasonableness" in other cases. It is well known that substantially all of our findings of unreasonableness are, and must of

necessity be, based to a great extent upon a measuring and weighing of the rates attacked with other rates which appear to afford a proper basis of comparison, so that, generally speaking, when we find a rate unreasonable, it is in effect, on account of the method by which our conclusion must be reached, a finding that the rate is unreasonable by comparison or relatively. In arriving at such a conclusion we must, of course, be convinced that the rates cited by way of comparison are properly comparable and that, when given the weight to which they are entitled they sufficiently indicate that the level of the rates attacked is too high. This question calls for the exercise of our judgment upon the particular facts presented. The mere fact that a rate under attack appears to be out of line with a few other rates to which it is closely related does not ordinarily afford a basis for finding the rate attacked unreasonable. Such a showing may as well indicate that the comparative rates are too low as that the rate assailed is too high, and the correction of such a maladjustment properly might be made under section 3 of the act but not under section 1. (*Lackawanna Steel Co. vs. Director General*, 87 I. C. C., 383, 384.)

Nor can the Commission disregard the rule that there must be evidence of similarity of conditions under the rates offered for comparative purposes.

Further rate comparisons are made by complainant intended to show lower ton-mile earnings received by various carriers for the transportation of coal from and to points in other sections of the Rocky Mountain territory than are received by defendants under the rate here involved; but these comparisons are not accompanied by evidence as to whether the transportation conditions

are similar or otherwise. In the absence of such evidence they furnish little or no aid in the solution of the question before us. (*R. R. Commissioners of Montana vs. D. & R. G. R. R. Co.*, 27 I. C. C., 522, 524-5.)

Under the undisputed testimony in this case the transportation conditions under the attacked rates are entirely different from those under the rates offered for comparative purposes. As shall presently be shown, the transportation conditions on the lines of Appellant for the movement in question are difficult and the costs are such that the rates offered for comparative purposes are of no value. Furthermore, the only rates in evidence before the Commission upon which it bases its finding of "relative unreasonableness," as has been shown have been uniformly characterized by the Commission as less than reasonable maximum rates for the service there involved.

It is the contention of the Appellant that the Commission has not only failed to make the findings necessary to support a finding of unreasonableness under Section 1 of the Act, but that if the findings had been made on the record in the instant case they would be invalid since they would be arbitrary and without evidence to support them.

Nowhere in the report of the Commission in this case is there a finding that the combination rate, composed of the local rates of the Virginian and the district rate of its connections, is unreasonable *per se*. The ton-mile earnings under the combination rate, according to the table quoted on page 56 of the record herein, range from 6.1 to 8.4 mills per ton-mile, while under the proposed rate, using the route via Pemberton, the earnings range from 5.4 to 6 mills per ton-mile. The Com-

mission could not legally fix the route via Pemberton, or prescribe the rate via such route for this traffic in connection with the Chesapeake & Ohio, since to do so would short haul the Virginian contrary to the provisions of paragraph 4 of Section 15 of the Act. The only route and rate that the Commission could prescribe would be via Deepwater.

Having no power to fix rates via Pemberton, or any other junction than Deepwater, the Commission must determine before establishing any rate, that the rate so specified is a reasonable maximum rate to apply over the specified route through Deepwater.

The Commission having found in the cases cited that the present rates to the boundary of the Kanawha group (the connection with the Chesapeake & Ohio at Deepwater) were made "in practical if not absolute disregard of distance, and all transportation conditions that ordinarily are taken into consideration in the making of rates," it is the contention of Appellant that under the undisputed testimony in this case, an extension of these group rates with the mere addition of the arbitrary differential of the Outer Crescent over the Inner Crescent rates ranging from 15 to 20 cents, per ton, is arbitrary and without evidence to support it.

The present cost of the Virginian for handling the coal from its mines to Deepwater, including a return on investment, are set out in the report of the Commission showing that it should receive \$1.01 per ton out of the westbound rates for its part of the haul to Deepwater (R. 28). This evidence is undisputed. It is conservative, since it did not take into account the increased costs that would come to the Virginian by reason of introducing the cross current of traffic that would follow.

The undisputed testimony as to the operating conditions is that in the westbound coal movement between Elmore and Deepwater there would be five miles of 1.65 per cent grade between Hotchkiss and Jenny Gap, requiring pusher service; five miles further on, between Surveyor and Harper, six miles of 1.11 per cent grade, likewise requiring pusher service; and eleven miles further on, between Lively and Silver Gap, five and one-half miles of 1.1 per cent grade, also requiring pusher service; three pusher grades with an aggregate lift of 1,165 feet; that in six miles between Page and Deepwater there are 23 curves in excess of 10 degrees, the maximum being 16 degrees; and that it would be necessary to revise this line at an enormous expenditure of money—more than a million dollars—to make it safe for the economic operation of heavy fonnage trains (R. 335, 336, 740, 1059, Ex. 23).

Furthermore, the haul from the complainants' mines to Deepwater (practically the longest haul to the West from the C. & O. in the Kanawha group) is 72 miles. A large part of this testimony the Commission has not recited in its report, but thus summarize it (R. 53):

A witness for the Virginian testified that the main line between Mullens and Deepwater, over which complainants' coals would probably pass in westbound movement, is more difficult of operation than the line east of Mullens, but it is apparent that this difficulty is due in a greater measure to operating practices than to physical obstacles. The highest point on eastbound traffic is encountered at Clark's Gap, Va., 2,700 feet above sea level. The highest point in the westbound movement to Deepwater is 2,000 feet above sea level. One locomotive can haul some 15 to 18 loaded cars eastbound over Clark's Gap Hill. About 20 loaded

cars can be hauled over the steepest grade westbound. Much eastbound coal is handled over the stretch of track between Mullens and Deepwater, including all of that originating on the Kanawha, Glen Jean & Eastern and moving in connection with the Virginian to tidewater. The road is laid with heavy rails and kept in good repair. Complainants introduced profile maps of the branch lines of the C. & O. in the New River district to show that the grades encountered on these branches equal or exceed in severity the grades on the main line of the Virginian between Mullens and Deepwater. The record will not warrant a conclusion that the difference in operating conditions from mines to Deepwater or between the haul over the Virginian and that over the branch lines and independent short-line connections of the C. & O. is in and of itself sufficient to warrant a higher level of rates from complainants' mines. Moreover, the Virginian may, if it elects, effect interchange with the C. & O. at Pemberton and thus obviate the haul from Mullens to Deepwater.

The finding of the Commission is that the rates from Virginian mines are relatively unreasonable as compared with rates from branch lines of the C. & O. and from short lines connecting with that carrier. Its comparison of eastbound grades with those westbound have no materiality to the present issue.

There is not a syllable of testimony in the record before the Commission that tends to show that any pusher service is required from any of the branches or short lines in the C. & O. blanket and the maximum amount that the Commission has required that carrier to shrink its revenues in order to extend the district rates to the short-line points is in the case of the Greenbrier & Eastern (*Nelson Fuel Co. vs. C. & O. Ry. Co.*),

83 I. C. C., 737, reaffirmed 96 I. C. C., 124, now pending before the Commission on rehearing, where the shrinkage is a maximum of $46\frac{1}{2}$ cents per ton, being the combined division of the Greenbrier & Eastern (15 cents per ton) and the Sewell Valley R. R. (10 per cent of the rate with a maximum of $31\frac{1}{2}$ cents per ton).

Appellant has contended and still contends that in fixing a maximum reasonable through rate to the West from Virginian mines, admitting for the sake of the argument only that such rates should be established in the public interest, under Section 1 of the Interstate Commerce Act, and the facts here of record:

1. The C. & O. is entitled to receive its full Kanawha District rate from Deepwater, nearly, if not quite, the most easterly and longest-haul point in the group.

2. The Virginian is entitled to receive at least \$1.00 per ton in order to provide a remunerative compensation to it for the costly service and investment detailed of record (R. 575).

The resulting rates would thus be from 80 to 85 cents per ton higher than the New River District rates which the Commission has by its order prescribed. But the Commission says that this calculation ignores the fact that the C. & O. will be relieved of its costs of assembling the coal from the mines. It seems improbable that the Commission in prescribing divisions of the through rate will require the C. & O. to shrink its Kanawha district rate the full amount of its assembling costs and then haul the coal from practically the furthest point in the group (Deepwater).

A mere statement of the operating conditions and the costs of the service, coupled with the repeated findings of the Commission, and the admissions of the witness

for complainant, as to the character of the group rates sought to be established, is, we submit, sufficient to support the contention of the Appellant that there can be no evidence to support a finding of unreasonableness, but that on the contrary, under the undisputed testimony in the case, the applicable rates are not unreasonable.

To what extent, if any, the conclusion of the Commission may be based upon a misapplication of and reliance upon the statement of counsel made before testimony was introduced, having reference not at all to the question of rates, as the context shows, but quoted in the report, we cannot say, but this does not in any way relieve the Commission from the obligation of determining the issues in the case upon the facts presented by the evidence in the record.

The statement of counsel quoted at page 51 of the record is more completely set out at p. 41 *infra*.

As stated before, it was made in an opening statement before testimony was introduced, had reference to the local rates of the Virginian which are under that carrier's local distance tariffs, obviously "impossible" for use as components in joint rates from a single district, since they run from \$1.14 to \$2.52 per ton, and were made to cover sporadic movements of occasional carloads of coal. Two mines on the Virginian with a spread of \$1.38 in freight rates cannot be competitors, nor can Virginian mines with a minimum "spread" of \$1.14 compete with Chesapeake & Ohio and Norfolk and Western mines. The reference to these rates as "impossible" was in the same sense as the same were so termed by a witness or witnesses for the complainants before the Commission, and as the assertion of

counsel for such complainants that any rates from Virginian mines made arbitraries over the district rates of the Chesapeake & Ohio would, as a practical matter, move no coal in quantities to the western markets and would be just as impossible as the present local distance rates of the Virginian in the normal market.

The statement in the report (R. 55), that:

Counsel for the Virginian admits that complainants' mines cannot compete with other mines in the district on account of the "impossible" rates,

is less misleading than the use of it earlier in the report. As here used, understanding that the competition referred to is in the western market, the statement of counsel is entirely accurate, but neither the one use of the statement nor the other in the report is justification to the Commission for the finding that through rates to the West from Virginian mines in any degree higher than the district rates of the Chesapeake & Ohio are either prejudicial or unreasonable.

Certainly none of the facts introduced by the Virginian and cited by the Commission in its report support the proposition that the through rates from Virginian mines are now unreasonable considered in and of themselves.

In two of the cases relied upon by the majority of Division 3 to support its finding that the shipper is entitled to reasonable rates regardless of the public interest the Commission approved a basis of rates that was made arbitrarily higher than the group rates of the line-haul carrier:

Wichita Board of Trade vs. A. T. & S. F. Ry. Co.,
25 I. C. C., 625.

Hughes Creek Coal Co. vs. K. & M. Ry. Co., 29
I. C. C., 671.

The adjustment authorized in the latter case was again prescribed in *Coal from W. Va. Mines*, 59 I. C. C., 486.

Another case involving a rate structure of similar character to that here involved was *Rates from Walsenburg Coal Field*, 26 I. C. C., 85, wherein the Commission recognized the propriety of off-line rates differentially higher than the district rates of the line-haul carrier.

Nor can these cases be laid aside or explained away by the later decisions of the Commission respecting short lines connecting with the Chesapeake & Ohio in the Kanawha and New River districts. *Coal from Sewell Valley R. R. Stations*, 58 I. C. C., 261; *McKell Coal & Coke Co. vs. C. & O. Ry. Co.*, 78 I. C. C., 227.

In each of these cases the mines served by the short lines had no other outlet to market than over the Chesapeake & Ohio, but, even under such circumstances, the Commission held in each case that the Chesapeake & Ohio was under obligation to extend the district rates to such mines and participate in the division thereof *only* to the extent that the cost of the service from mine to market did not exceed that borne by the Chesapeake & Ohio on the average from the mines on its own rails in the group.

Here the situation is wholly reversed. The Virginian furnishes transportation from mine to market to the East on the district basis, and the markets in the East are shown to be adequate to absorb all of the coal produced on the Virginian. The cost of the service to the

West is shown to exceed by large amounts the costs developed on the record in these short-line cases, and inferentially, at least, in excess of the average on the Chesapeake & Ohio, particularly when the duplication of capital costs is taken into consideration.

These facts with respect to cost have been wholly misconceived by the majority of Division 3 of the Commission. They were introduced in evidence before the Commission not with a view to a present fixing of the divisions of the joint rates proposed but to demonstrate to the Commission that if and when the Chesapeake & Ohio New River district rate, including the costs of the Virginian, is spread over the mines of the Virginian, the resulting revenues would be insufficient to cover the costs of both carriers. Any division of the rates that might be prescribed would fall far short of providing adequate compensation for the service as a whole.

As hereinbefore pointed out, this evidence also completely refutes the finding of the Commission with respect to unreasonableness by demonstrating that the operating conditions from the mines of complainants are wholly different and vastly more costly than are those under the rates with which these are compared.

IV

The action of the Commission in ordering Chesapeake & Ohio New River District rates applied for joint application from Virginian mines is arbitrary, not in the public interest, and not supported by evidence sufficient to justify a finding that the rates applied from such mines are either unreasonable or unduly prejudicial.

The Commission is an administrative body of limited

jurisdiction. The Interstate Commerce Act defines its powers and duties and defines the duties and obligations of carriers which the Commission is empowered to compel.

Whenever a carrier is charged with an infraction of the law the carrier is entitled to make its defense and the Commission is required to make its report on the record before it in writing, so that the carrier may have the definite determination of the Commission on each phase of the case made. Nowhere is the wisdom of that protection contained in the written report more evident than in the case here presented.

We have shown that the Commission by its report has failed to find any discrimination or prejudice in the practices or rates of Appellant that can legally be held to violate any provisions of the Interstate Commerce Act; we have shown that the Commission has erred in its finding that the rates on coal to the west are unreasonable when considered by the ordinary transportation standards; that the Commission is without power to order the establishment of through rates merely because another carrier has established such rates; that the Commission has disregarded any consideration of the public interest in reaching its conclusion; and that in its report the Commission has misapplied some facts directed to all these questions and has failed to report many other facts tending to prove the contrary conclusion from that reached by the Commission. We shall presently show that the Commission has refused to interpret its order or reopen the case to consider new facts arisen after its decision which alter the whole controversy and constitute a compliance with the Commission's order without any impairment

of the interests of the complainants, the Appellant or the public.

The action of the Commission is thus shown by the record here to be so arbitrary as to transcend its powers.

V

(a) Rates to the west on the New River District level to substantially all of the destinations mentioned in the Commission's order from Virginian mines via the Norfolk & Western Railway Company established within the effective date of the order of the Commission constitute compliance with the order of the Commission, and, therefore, the order should be set aside in so far as it requires through rates to be established via the Chesapeake & Ohio.

The order of the Commission should be set aside in so far as it may require the establishment of routes and rates to the west via the lines of the Chesapeake & Ohio because equivalent rates and routes have been established to substantially all destinations required by the order, but via the lines of the Norfolk & Western. These routes and rates satisfy the complaint under which the proceedings were initiated. They were established within the time prescribed by the Commission's order under circumstances and conditions detailed below, as appears by the record in the lower court and by petitions to reopen the cases before the Commission, one of which was denied before the bill herein was filed, and the other of which has not been passed upon by the Commission.

The insistence by the Commission that rates to the west be also established via the Chesapeake & Ohio is

further evidence of the arbitrary character of its action.

It should be explained that the Norfolk & Western Railway serves the coal fields contiguous to Appellant's line on the south, as does the Chesapeake & Ohio the competing fields on the north. Both of these connections have lines to the seaboard and to the west that may generally be described as parallel and competing lines east and west. They reach substantially all of the same destinations either by their own rails or through their connections. Both publish the same rates from the low volatile fields to the west and reach by their rates and routes all competitive points. Such local points on the C. & O. as are not reached by the district rates from mines on the N. & W. are offset by local destinations on the N. & W. that are not reached by the C. & O.

When considered, however, from the standpoint of the Appellant's operation of through routes to the west there are important differences between these two connections in that:

1. The connection with the Norfolk & Western is at Matoaka, which lies east of Appellant's principal assembly yard at Mullens. Therefore, the movement of western coal to this connection not only permits the assembling from the mines without introducing any cross-current of traffic, but it moves out from the yard in the same direction as the eastbound coal and permits intensive use of the new installation of electric motive power on Appellant's line (R. 1058 et seq.).

2. Matoaka is on Appellant's main line and required no substantial investment to make into an effective interchange (R. 1058 et seq.).

3. The Norfolk & Western has arranged to furnish

a substantial part of the car supply necessary to handle Appellant's coal to the west (R. 1058 et seq.).

4. The Norfolk & Western has agreed to pay divisions compensatory to Appellant.

5. Rates to the west in connection with the Norfolk & Western will foster and enlarge carrier competition in the New River field that would be entirely eliminated if the C. & O. were the only outlet west.

6. The Norfolk & Western has agreed to build a line of road to a connection with the Appellant's line at Mullens that will afford an entirely satisfactory western outlet.

7. The Norfolk & Western has leased Appellant's line, application for approval of which is now pending before the Commission.

While these cases were on hearing before the Commission, the complainant's principal witness in effect conceded that the establishment of Western rates via Matoaka and the Norfolk & Western would satisfy the complaints. His testimony in this regard will be found at page 312 of the record:

We would have no objection to that. What we want is the western market. If the Virginian and the Norfolk & Western would get together and establish joint through rates on the New River district basis via Matoaka and the Norfolk & Western and serve those through routes and give the benefit of the car supply of the Norfolk & Western and its connections, there is no objection to that. We would join you in a petition, if you want to make a petition to that effect.

While these cases were pending before the Commission negotiations looking to the lease of the Virginian's line by the Norfolk & Western were entered upon and

an agreement thereto was reached shortly after the original report of the Commission herein was announced. The lease is for 999 years and the application for its approval by the Commission is now pending. (I. C. C. Finance Docket No. 4943.)

From the discussion of the rate structure here involved as outlined on page — hereof, it is obvious that the Norfolk & Western, under a lease operation of the Virginian property, would be guilty of undue prejudice if it failed to extend the district rates to the West to the mines located on Appellant's line. Application was therefore immediately filed with the Commission requesting a reopening of these cases in the light of the new facts and the offer of these carriers to establish the district rates via Matoaka. In the alternative it was prayed that the order be amended so as to permit the substitution of the route via the Norfolk & Western for that via the C. & O. This application was denied and thereupon the rates were established via the Norfolk & Western within the time required by the order. The Commission granted the necessary tariff authorities to permit the effective publication of the rates and they went into effect. The complainants and all other shippers on the Appellant's line now have the benefit of the rates to the West that were prescribed in the order here under attack, to practically all points.

The establishment of this route and rate voluntarily by the Appellant was made at the request of its lessee upon a compensatory basis of divisions agreed to temporarily during the pendency of the application for approval of the lease; because the operation would not interfere with the effective movement of its eastbound coal; and because the lessee was in position and agreed

to furnish a share of the necessary additional car equipment. Under the circumstances outlined the establishment of the rates was a benefit to Appellant and not a hindrance and burden such as would result from a movement in connection with the Chesapeake & Ohio, as hereinbefore set out.

The establishment of the rates via the Norfolk & Western can not be taken as an admission by the Appellant that the through rate to the West is inherently reasonable, in the sense that the Commission would have power to prescribe it as a reasonable maximum through rate. From the point of view of Section 1 of the Interstate Commerce Act the district rate applied via the present route is probably as much too low as is the same rate to cover a movement via Deepwater and the C. & O.

But with a compensatory division to Appellant, taken in connection with the movement eastbound over its line and no great deletion of its car supply, Appellant has been willing to accede to the request of the Norfolk & Western in order that that line might avoid a present charge of discrimination, and establish the rate now and thus avoid the chaos to the shippers that would inevitably follow when this route should be substituted for that over the C. & O. upon the approval of the lease. Finally the Norfolk & Western probably desires to have the traffic moving over its lines now even at unremunerative rates so that the lanes of commerce in westbound coal may not be disturbed when it constructs the projected connection at Mullens over more favorable grades.

Under the law as it existed prior to 1906 the Commission would be without power to establish the rates via the Chesapeake & Ohio because a satisfactory

through route and rate already exist. When this limitation of law was removed Congress did not remove it as a proper limitation to be applied by the Commission in exercising its function of finding a through route or rate desirable in the public interest. Its action in refusing to reopen the case or amend its order in the light of the Norfolk & Western rate and route was so arbitrary as to transcend its powers.

This situation alone was sufficient to justify the Court below in setting aside the Commission's order insofar as it required the routes and rates to be established via the C. & O., or, at the least, to set aside the order pending action by the Commission upon the petition to reopen that is now before it based on these considerations and not acted upon.

(b) To permit the Commission's order requiring rates to the west to be established by way of the Chesapeake & Ohio as well as the Norfolk & Western would make an especially preferred class of the Virginian coal shippers, resulting in discrimination in their favor and prejudice against the Norfolk & Western and Chesapeake & Ohio coal shippers more flagrant than the alleged discrimination against the Virginian local mine shippers complained of in the proceedings before the Commission here involved.

The Commission has construed its order herein as requiring the establishment of the rates to the West via both the C. & O. and N. & W. It was so construed prior to the filing of the original bill herein, an allegation to that effect was contained in paragraph XIII of the original complaint, and there is no denial thereof by the answer of the Commission.

To give the interpretation to the order that is put upon it by the Commission would be to create a prefer-

ence in favor of the Complainants before the Commission in order to remove a doubtful preference in favor of mines served exclusively by the Chesapeake & Ohio and the Norfolk and Western respectively. The preference which would thus be given to the Complainants before the Commission would be to establish from their mines through routes and rates via two lines whereas the mines local to the Norfolk & Western and the Chesapeake and Ohio must depend respectively upon the service of those lines; in other words, whereas the Complainants alleged in their complaint to the Commission that certain mines served jointly by the Virginian and Chesapeake and Ohio, under the trackage arrangement hereinbefore discussed, had two outlets to the East and one to the West, the situation will be entirely reversed under the Commission's order in that the Complainants will have two outlets to the West as against only one for the mines served exclusively by the Chesapeake and Ohio and Norfolk and Western, respectively. Furthermore, the 45 joint mines which were particularly alleged to be preferred would, under the order of the Commission thus interpreted, have still greater preference in that these mines would have three routes to the West as against one available to the mines served exclusively by the C. & O. and N. & W., continuing at the same time to have two routes to the East as against one available to any other mine in the region. The order thus interpreted would create a greater and more real preference than the alleged one which is sought to be removed by the order.

VI

**The Issuance of the Order Requiring the Maintenance
of the Status Quo Pending the Appeal Was Clearly
Within the Powers of the Court Below**

A cross-appeal has been filed herein by the United States and the Interstate Commerce Commission from that portion of the decree of the Court below, which required the maintenance of the *status quo* pending the appeal, the court being of the opinion "that irreparable damage will result to the Complainant pending such appeal if this decree shall be reversed on appeal" (R. p. 85).

The portion of the final decree complained of is as follows (R. 85):

"2. The Complainant indicating an intention to appeal from this decree, and the Court being of opinion from all the evidence in the case that irreparable damage will result to the Complainant pending such appeal if this decree shall be reversed on appeal, it is further ordered that the United States of America, the Interstate Commerce Commission and The Chesapeake and Ohio Railway Company be temporarily restrained from making effective the order of the Interstate Commerce Commission mentioned in the Bill of Complaint and the Amended Bill in this case, viz, orders entered on March 10, 1925, and an amended or revised order entered on May 19, 1925, in two proceedings then pending before said Commission, viz, Gulf Coal Company et al. vs. Virginian Railway Company et al., I. C. C. Docket No. 13832 and Wyoming Coal Company et al. vs. Virginian Railway Company et al., I. C. C. Docket No. 14454,

pending the perfecting of such appeal by the Complainant to the Supreme Court of the United States within thirty days from this date, and upon the perfecting of such appeal thereafter until the determination of the same by said Supreme Court, unless such restraining order shall be sooner set aside by said Supreme Court."

The power to issue an order preserving the *status quo* pending appeal, has been exercised by this Court in these cases in which orders of the Interstate Commerce Commission were involved. (*Omaha & Council Bluffs Street Railway Co. vs. Interstate Commerce Commission*, 222 U. S., 582, and *United States vs. Merchants & M. Traffic Asso.*, 242 U. S., 178). In the last cited case no mention of the issuance of the order is made in the decision, but an examination of the record will indicate that such an order was issued by Mr. Justice McKenna, on the application of the United States, after the lower court had enjoined the order of the Interstate Commerce Commission, and had refused to issue the requested order.

In *Central Railroad Co. of New Jersey vs. U. S.*, 257 U. S., 247, the district court, as here, dismissed the bill on the merits but granted the injunction pending appeal, and no question was raised in this Court by either the Commission or the United States against the power of the court.

The power to issue the order is clearly granted by Section 262 of the Judicial Code, which is as follows (36 Stat. 1162):

The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the Circuit Court of Appeals and

the District courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

The application of this section to a case identical in all respects to the instant case is passed on by this Court in its order in *Omaha & Council Bluffs case*, *supra*:

Per Curiam: Upon the authority of U. S. Rev. Stat. Sec. 716, U. S. Comp. Stat. 1901, p. 580; *Ex parte Milwaukee & M. R. Co.*, 5 Wall, 188; *Leonard vs. Ozark Land Co.*, 115 U. S., 465, 468; *Re Claasen*, 140 U. S., 200, 207; *Re McKenzie*, 180 U. S., 536, 549; *United States vs. Shipp*, 203 U. S., 563, and upon full consideration of the facts bearing upon the propriety of the Appellant's motion for an order to maintain the *status quo* pending this appeal, it is ordered that the enforcement of the order of the Interstate Commerce Commission entered November 27, 1909, and drawn in question in this case, be, and it is suspended and enjoined during the pendency of this appeal, upon condition that within ten days herefrom the Appellants execute unto the Interstate Commerce Commission and file in this cause a good and sufficient bond in the sum of \$10,000, with sureties to be approved by the clerk of this court, and conditioned that the appellants will promptly pay any and all damages which may be suffered by their several passengers and intended passengers by reason of the granting or continuance of this order if it is adjudged ultimately that the order of the Interstate Commerce Commission, drawn in question in this case, is a valid one.

In the case of *Southern Railway Company vs. Watts*, 259 U. S., 576, this Court, in referring to the application for a *supersedeas* pending the appeal to the District Court, said:

Per Curiam: In these cases, which were suits brought under Sec. 266, Judicial Code, as amended by the Act of March 4, 1913 (37 Stat. at L., 1013), for a preliminary and permanent injunction, a preliminary injunction was denied by the district court, and a stay granted until an application could be made to this court. As the district court is familiar with the character of the case, and we are not, we deny the motion for a stay, with leave to apply to the district court for a stay until the matter can be disposed of here, if, in its judgment, it deem that such a stay should be granted. The motion to advance is granted, and the cases set for hearing on the first Monday in November.

In the case of *Cumberland Teleph. & Teleg. Co. vs. Louisiana Pub. Serv. Com.*, 260 U. S., 212, Mr. Chief Justice Taft, speaking for this Court, said (p. 219):

The appellees ask that if we conclude to set aside the injunction, we entertain a motion to grant one now to preserve the status quo. The fact that a majority of the three judges of the district court denied the interlocutory injunction suggests the want of merit in the application here. We, of course, appreciate that, notwithstanding a denial of an injunction on its merits, a court may properly find that, pending a final determination of the suit on the merits in a court of last resort, a balance of convenience may be best secured by maintaining the status quo and securing an equitable adjustment of the finally adjudicated rights of all con-

cerned through the conditions of a bond. *Hovey vs. McDonald*, 109 U. S., 150, 161; Equity Rule No. 74. But the court which is best and most conveniently able to exercise the nice discretion needed to determine this balance of convenience is the one which has considered the case on its merits, and, therefore, is familiar with the record. Records in cases like this are often very voluminous. Such is the record in this case. Without abdicating our unquestioned power to grant such an application as this, and conceding that exceptional cases may arise, we are generally inclined to refer applications of this kind to the court of three judges who have heard the whole matter, have read the record, and can pass on the issue without additional labor. That was the course taken by this court in *Southern R. Co. vs. Watts*, No. 927, October Term, 1921. Per curiam, decided May 29, 1922 (259 U. S., 576).

And in the case of *Cunard S. S. Co. vs. Mellon*, 284 Fed., 891, the court said (p. 897):

I suppose that the question of a temporary restraining order pending the appeal is of a good deal more consequence to the plaintiffs than anything I may think about the law. The powers under the seventy-fourth rule (198 Fed. xxxix, 115 C. C. A. xxxix) to grant such an order is undoubted, notwithstanding a dismissal of the bill. *Merrimac River Savings Bank vs. City of Clay Center*, 219 U. S., 527, 31 Sup. Ct. 295, 55 L. Ed. 320, Ann Cas. 1912D, 513; *Staffords vs. King*, 90 Fed. 136, 32 C. C. A. 536. Moreover, the whole thing rests in the discretion of the trial judge. The question is how far the absence of any protection to the losing party will expose him to serious and irreparable damage, if in the end he wins, without imposing an equal damage upon the other

party, if he holds his decree. Like all such matters, it depends upon a balance between the two, and I must now assume that the chances of success are not equal.

The court below had before it the facts with regard to the establishment of district rates via the Norfolk and Western, in accordance with the Commission's order, and that the complainant shippers were thereby receiving, and would continue to receive, all of the benefits of the order, so that no interests would be prejudiced by the granting of the restraining order pending the appeal to this Court.

Conclusion

The decree of the District Court in No. 281 should be reversed, and the cross-appeal in No. 282 dismissed.

Respectfully submitted,

E. W. KNIGHT,
W. H. T. LOYALL,
JAMES W. CARMALT,

Counsel for The Virginian Railway Company.

WILLIAMS, LOYALL & TUNSTALL,
CARMALT & KOPLIN,
Of Counsel.